

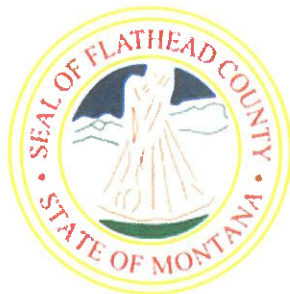


Contract Documents and Specifications

2022 CRACK SEAL PROJECT

Flathead County, Montana

March 2022



Prepared by:

Flathead County Road & Bridge Department

Kalispell, Montana

2022 Crack Seal Project Flathead County, Montana

Contract Documents and Specifications



Flathead County Road & Bridge Department

1249 Willow Glen Drive
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BIDDING REQUIREMENTS AND INFORMATION

SECTION I
INVITATION TO BID

Separate sealed Bids will be received by the Board of County Commissioners of Flathead County, 800 South Main Street, Room 302, Kalispell, MT 59901 until **4:00 p.m., local time, WEDNESDAY, APRIL 20, 2022**, for the **2022 Crack Seal Project**. All received Bids will be opened and read aloud at **9:00 a.m., local time, THURSDAY, APRIL 21, 2022** in the **Commissioners' Chambers, located on the third floor of the County Courthouse**.

The proposed work includes placing crack sealing throughout the Flathead County Roadway System.

Various roadways will be receiving crack sealing improvements in Flathead County, and the Contractor should be prepared to mobilize equipment on a daily basis.

All Bids must be in accordance with the Contract Documents on file with the **Flathead County Road & Bridge Department, 1249 Willow Glen Drive, Kalispell, Montana, (406) 758-5790**.

Digital project bidding documents are available upon request. Contact the **Flathead County Road & Bridge Department** for a digital copy of the bidding documents. You may download and print the Contract Documents at no charge, however, all Prime Contractors that intend to offer a bid for this project must contact the **Flathead County Road & Bridge Department** at the address stipulated above to obtain an "Official" Bid Proposal form, at no charge, and to get their name added to the Planholders List. The entire set of bidding documents may also be obtained in the form of printed contract documents and specifications, and the "Official" Bid Proposal for a non-refundable deposit of \$100.00, if the Contractor chooses not to download and print their own documents. No bids will be considered unless they are submitted on the "Official" Bid Proposal form and the Contractor's name has been included on the Planholders List.

A prebid conference will be held at the office of the **Flathead County Road & Bridge Department** commencing at **1:00 p.m., THURSDAY, APRIL 14, 2022**. Those interested in bidding the project are encouraged to attend this meeting.

Bids will be received on a price basis as described in the Contract Documents. Bid security in the amount of 10 percent of the total Bid must accompany each Bid.

Within 10 calendar days after the Notice of Award, the successful Bidder will be required to furnish a Performance Bond and a Labor and Materials Payment Bond guaranteeing faithful performance and the payment of all bills and obligations arising from the performance of the contract. The bonds will each be equal to 100 percent of the contract amount.

Work at the site is to commence within 10 calendar days after the written Notice to Proceed is issued. Completion of the work is required within **21 calendar days** following commencement of work, and all work to be completed by **June 30, 2022**. The project includes liquidated damages that will be assessed as set forth in the Special Provisions per calendar day if the work is not complete within the allotted contract time.

Each bidder will be required to be registered with the State of Montana, Department of Labor and Industry prior to bidding this project.

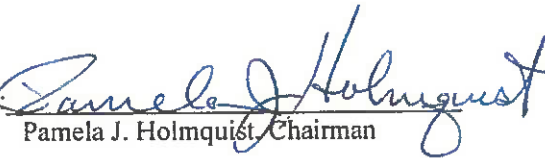
No Bid may be withdrawn within a period of 60 days after the date for opening bids.

The Board of County Commissioners of Flathead County reserves the right to reject all Bids, to waive informalities, and to reject nonconforming, irregular, non-responsive or conditional Bids.

Flathead County is an Equal Opportunity Employer.

Dated this 22nd day of March 2022.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By 
Pamela J. Holmquist, Chairman

Published on April 3rd and April 10th, 2022.

SECTION I
INSTRUCTIONS TO BIDDERS

1. BIDS

- a. All bids must be submitted on an "Official" Bid Proposal form supplied by the Owner and shall be subject to all requirements of the Contract Documents including the Drawings and these Instructions to Bidders. All bids must be regular in every respect and no interlineations, alterations, or special conditions shall be made or included in the Bid Proposal by the Bidder.
- b. Complete sets of bidding documents shall be used in preparing Bids; the Owner does not assume any responsibility for errors or misinterpretations resulting from downloading, printing, and using incomplete sets of Contract Documents.
- c. Each Bid Proposal shall include the following: (1) "Official" Bid Proposal, and (2) Bid Security.

The "Official" Bid Proposal shall be enclosed in an envelope which shall be sealed and clearly addressed as follows:

**Addressed to: Clerk to the Board of County Commissioners
800 South Main Street, Room 302
Kalispell, Montana 59901**

**Mark lower left-hand corner
of your envelope as follows:**

Project Name:2022 CRACK SEAL PROJECT
Bid Date\Time: _____
Contractor Name: _____
Acknowledge Receipt of Addendum No(s): _____

- d. Bids will be written in ink and/or typewritten on bid forms furnished within the Official Bid Packet. The blank spaces on the forms must be filled in correctly for each item, and the bidder must state the price (written both in words and numerals) for which he proposes to do each item of work contemplated. All Bid Proposals must be totaled, and, in the case of errors or discrepancies, the item prices written in words shall govern.
- e. Erasures or corrections must be initialed by the Bidder in ink.
- f. Bids must be signed by a proper representative of the firm submitting the bid. Proper representatives are the principal of a singly owned firm, a principal of a partnership firm, and an officer or authorized agent of an incorporated firm.
- g. Reserved.
- h. Contract Documents may be viewed at the following locations:

**Flathead County Road & Bridge Department
1249 Willow Glen Drive
Kalispell, MT 59901
Phone: (406) 758-5790**

2. BID SECURITY

The Bid must be accompanied by a Bid Security which shall not be less than 10 percent of the amount of the bid. At the option of the Bidder, the security may be in the form of a cashier's check, certified check, bank money order, or bank draft drawn and issued by a national banking association located in the State of Montana or by any banking corporation incorporated under the laws of the State of Montana or Bid Bond (EJCDC C-430) executed by a surety corporation authorized to do business in the State of Montana. No bid will be considered unless it is accompanied by the required guaranty. Cashier's checks, certified checks, bank money orders, or bank drafts must be made payable to the **Flathead County**. The Bid Security shall insure the execution of the Agreement and the furnishing of the surety bond or bonds by the successful Bidder, all as required by the Contract Documents.

Should the Bidder fail to furnish the properly executed Performance Bond, Labor and Material Payment Bond, Insurance Certificates, and signed Agreement within the time specified, he/she shall forfeit this Bid Security to the Owner. The Bid Security (negotiable instruments other than bonds) will be returned to unsuccessful Bidders when the successful Bidder has signed the Agreement and furnished satisfactory Performance and Labor and Material Payment Bonds. At the option of the Owner, bid security with bids that are not competitive may be returned prior to signature of the Agreement.

Revised Bids submitted before the opening of bids, if representing an increase in the original bid, must have the Bid Security adjusted accordingly; otherwise, the bid will not be accepted.

If the Bidder elects to furnish a Bid Bond, he shall use the Bid Bond form (EJCDC C-430) bound within the "Official" Bid Packet.

3. SUBSTITUTE AND "OR-EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to the Owner, application for such acceptance will not be considered by the Owner until after the Effective Date of the Agreement.

4. INTERPRETATIONS AND/OR ADDENDA

All questions about the meaning or intent of the Contract Documents are to be directed to the Owner. Interpretations or clarifications considered necessary by the Owner in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the Owner as having received the Bidding Documents. Questions received less than 10 days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. It shall be the responsibility of the Bidder to obtain such Addenda prior to submitting his proposal, and to acknowledge receipt of all Addenda issued in the Bid Proposal.

5. EXAMINATION OF CONTRACT DOCUMENTS AND CONDITIONS OF WORK SITE

- a. It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the sites to become familiar with local conditions that may affect cost, progress, performance, or furnishing of the Work, (c) consider federal, state, and local Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify Owner of all conflicts, errors, or discrepancies in the Contract Documents.
 1. Each Bidder should visit the sites of the proposed work and fully acquaint himself with the existing conditions there relating to construction and labor and should fully inform himself as

to the facilities involved, and the difficulties and restrictions attending the performance of the Contract. In submitting a bid for this project, the Bidder is thereby acknowledging that he is capable of performing the specified work on the site. The Bidder should thoroughly examine and familiarize himself with the Technical Specifications, and all other Contract Documents, and shall verify the accuracy of the estimated quantities in the Bid Proposal. Failure to do so will not relieve the successful Bidder of his obligations to carry out the provisions of this Contract.

2. The submission of a Bid will constitute a representation of familiarization by the Bidder. There will be no subsequent financial adjustment for lack of such familiarization.
- b. Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface, and underground facilities) at or contiguous to the sites or otherwise which may affect cost, progress, performance or furnishing of the Work which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other items and conditions of the Contract Documents.
- c. On request in advance, Owner will provide each Bidder access to the sites to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up, and restore the site to its former condition upon completion of such explorations.
- d. The lands upon which the Work is to be performed, rights-of-way, and easements for access thereto are designated for use by Contractor in performing the Work. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor.
- e. The submission of a Bid will constitute representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences, or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6. TIME FOR RECEIVING BIDS

Bids received prior to the advertised time of opening will be securely kept sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered.

7. OPENING OF BIDS

At the time and place fixed for the opening of bids, the Owner will cause to be opened and publicly read aloud every bid received within the time set for receiving Bids, irrespective of any irregularities therein. Bidders and other persons properly interested may be present, in person or by representative.

8. WITHDRAWAL OF BIDS

Bids may be withdrawn at any time prior to the scheduled closing time for the receipt of bids if through written confirmation or in person. The Bid Security of any Bidder withdrawing his bid in accordance with the foregoing conditions shall be returned promptly. No bids shall be withdrawn for a period of 60 days after the scheduled closing time for receipt of bids.

9. METHOD OF AWARD

- a. **Award of the contract shall be to the lowest “responsible” Bidder whose unit price is the lowest “responsible” bid for the work.**
- b. If such lowest bid exceeds the budget, the Owner may reject all bids.
- c. The Owner reserves the right to reject any or all bids or to waive any irregularity or informality in any bid received. The Owner reserves the right to determine what constitutes material and/or immaterial informalities and/or irregularities.
- d. The Owner shall award such contract to the lowest “responsible” bidder (18-1-102 MCA). The term “responsible” does not refer to pecuniary ability only, or the ability to tender sufficient performance and payment bonds. The term “responsible” includes, but is not limited to:
 1. Having adequate financial resources to perform the contract or the ability to obtain them;
 2. Being able to comply with the required delivery, duration, and performance schedule;
 3. Having a satisfactory record of integrity and business ethics;
 4. Having the necessary production, construction, technical equipment, and facilities, and;
 5. Having the technical skill, ability, capacity, integrity, performance, experience, lack of claims and disputes, lack of actions on bonds, lack of mediations, arbitrations, and/or lawsuits related to construction work or performance, and such like.
- e. Unless otherwise stated in the Special Provisions, all contracts will be awarded in conformance with the laws of the State of Montana. Pursuant to Section 18-1-102, Montana Code Annotated, the Owner, in awarding public contracts for construction, repair, and public works of all kinds, shall award such contract to the lowest responsible Bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of any non-resident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.
- f. The Owner may make such investigations as it deems necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified and responsible to carry out the obligations of the Agreement and to complete the Work contemplated therein.

10. PRE-AWARD CONFERENCE

The Bidder submitting what appears to be the lowest “responsible” bid may be required to meet with the Owner prior to the award of the contract for the purpose of discussing pertinent details pertaining to the proposed Work. The following points will be considered in particular:

- a. The Contractor's organization and equipment available for work and the Contractor's proposed sources of materials or installed equipment.
- b. Contractor's financial status and capability to execute the contract.

- c. The Contractor's proposed schedule of operations.
- d. The interpretation of the Specifications.
- e. The Contractor's proposed wage rates for use on the project.
- f. Bidder status concerning "responsibility".
- g. Approval of subcontractors.
- h. Unbalanced bids, either in excess or below the reasonable cost analysis value.

Should the conference indicate that the Contractor does not appear to be in a position to properly undertake the Work or that he has not properly familiarized himself with the Plans and Specifications, the Owner reserves the right to reject the bid of this Contractor and to consider the next Bidder.

11. EXECUTION OF AGREEMENT

- a. Subsequent to the award and within 10 days after the date of the Notice of Award, the successful Bidder shall execute and deliver to the Owner an Agreement, the Performance Bond, Labor and Material Payment Bond, Insurance Certificates, and an Approval of Subcontractors form in such number of copies as the Owner may require. The standard Agreement form as issued by the Owner shall be used as the contracting instrument.
- b. The Agreement form shall be signed in longhand by the proper representatives of the contracting firm as follows:
 - 1. The principal of the single-owner firm.
 - 2. A principal of the partnership firm.
 - 3. An officer of the incorporated firm, or an agent whose signature is accompanied by a certified copy of the resolution of the Board of Directors authorizing the agent to sign.
 - 4. Other persons signing for a single-owner firm or a partnership shall attach a Power of Attorney evidencing his authority to sign for that firm.
- c. The Owner within 30 days of receipt of acceptable Performance Bond, Labor and Material Payment Bond, required Insurance Certificates, and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the Agreement within such period, the Bidder may by written notice withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Owner.

12. PERFORMANCE, LABOR AND MATERIAL PAYMENT BONDS, AND INSURANCE

- a. The Owner will require the successful Contractor to furnish a Performance Bond (EJCDC C-610) in the amount of 100 percent of the contract price as security for the faithful performance of his Contract.
- b. The Owner will require the successful Contractor to furnish a Labor and Material Payment Bond (EJCDC C-615) in the amount of 100 percent of the contract price as security for the payment of all persons performing labor and furnishing materials in connection therewith.

- c. The bonds will be signed by the Attorney-in-fact and countersigned by a Montana Resident Agent.
- d. Prior to beginning work, Insurance Certificates as proof of insurance coverage shall be filed with the Owner. The specifications for the Workers' Compensation, Commercial General Liability, Separate Owner's and Contractor's Protective Policy, and other related insurance are listed in these Contract Documents.

13. POWER OF ATTORNEY

- a. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their Power of Attorney.
- b. One original shall be furnished with each set of bonds.
- c. Additional copies furnished with a set of bonds may be copies of that original.

14. LABOR AND WAGES

- a. For projects in excess of \$25,000, the Contractor(s) shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable in the county or locality in which the work is being performed (18-2-403, Montana Code Annotated).
- b. On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States Department of Transportation or when residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, each Contractor shall ensure that at least 50 percent of the Contractor's workers performing labor on the project are bona fide Montana residents, as defined in 18-2-401, (18-2-409, MCA).
- c. Montana Prevailing Wage Rates. The Montana Commissioner of Labor and Industry has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, Montana Code Annotated. A copy of the wage rates are bound herein. It is the Contractor's responsibility to classify their workers in accordance with the craft of trade to be performed and pay the appropriate established prevailing wage rate.
- d. The Contractor shall classify all workers on the project in accordance with the Department of Labor Wage Rate Determinations. In the event the Contractor is unable to classify a worker in accordance with these rates, the Contractor shall contact the Department of Labor and Industry, Labor Standards Bureau, Wage and Hour Unit, Helena, Montana 59604, for a determination of the prevailing wage rate to be paid that particular worker.
- e. Should the prevailing rate of wages change during the life of the contract, the wage rates included in the Contract Documents at the time of the bid opening shall be the prevailing wage rate for the life of the contract.
- f. Section 18-2-406, Montana Code Annotated, provides that Contractors, subcontractors, and employers who are performing services under public works contracts as provided in this part shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages and fringe benefits to be paid to employees on such site or work area.

- g. Travel allowance, if applicable, may or may not be all-inclusive of "travel" and/or subsistence and travel time due employees. It is incumbent on the employer to determine the amounts due for each craft employed according to the method of computation outlined for each craft where applicable.
- h. Any notice of infraction of the labor laws of the State of Montana received by the Owner will be forwarded to the State of Montana, Department of Labor and Industry, Wage and Hour Unit, Helena, Montana.
- i. Safety Training. Contractor shall comply with the Occupational Safety and Health Act (OSHA).

15. EQUAL EMPLOYMENT OPPORTUNITY

Attention of Bidders is particularly called to the requirement for ensuring that employees and applicants for employment are not discriminated against because of their race, color, religion, national origin, sex, marital status, age, or political ideas. The Owner is an equal opportunity employer.

16. MONTANA CONTRACTOR'S TAX (GROSS RECEIPTS TAX)

All Bidders are reminded that a Gross Receipts Tax in the amount of 1 percent of the total bid will be withheld from all payments, for projects over \$5,000.00, due to Contractor pursuant to Section 15-50-205, MCA.

17. PAYROLLS AND BASIC RECORDS

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or in the development of the project. Such records will contain the name and address of each employee, his correct classification, rates of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.

In addition, the Contractor will submit weekly a copy of all payrolls to the Owner. The copy shall be accompanied by a certification signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Montana Department of Labor and Industry, and that the classifications set forth for each laborer or mechanic conform with the work he performed. The prime Contractor will make the record required under the labor standards clause of the Contract available for inspection by authorized representatives of the Owner and the Montana Department of Labor and Industry and will permit such representatives to interview employees during working hours on the job.

Payroll reports and certificates of compliance shall be submitted to the Owner prior to or with each Payment Request. The copies sent to the Owner are for archive purposes only, because the Owner is not trained in the interpretation of payroll reports, and thus will rely on the Contractor's certification that all employees are being classified and paid appropriately.

18. MAINTENANCE OF RECORDS

Contractor shall maintain all required records for three years after the Owner makes final payment and all other pending matters are closed.

19. NOTICE TO PROCEED

The Notice to Proceed will normally be issued within 30 days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual written agreement between the Owner and Contractor.

20. CONTRACT TIME

The Contract Time will be as set forth in the Special Provisions.

21. LIQUIDATED DAMAGES

Liquidated damages will be as set forth in the Special Provisions.

22. MONTANA CONTRACTOR'S REGISTRATION

Each bidder will be required to be registered with the State of Montana, Department of Labor and Industry prior to bidding this project.

SECTION II

BIDDING DOCUMENTS

SECTION II

BID PROPOSAL - DIGITAL

ALL BIDDERS MUST CONTACT THE FLATHEAD COUNTY ROAD & BRIDGE DEPARTMENT AT THE ADDRESS STIPULATED IN THE INVITATION TO BID TO OBTAIN AN "OFFICIAL" BID PROPOSAL AND TO GET THEIR NAME ADDED TO THE PLANHOLDERS LIST.

NO BIDS WILL BE CONSIDERED UNLESS THEY ARE SUBMITTED ON THE "OFFICIAL" BID PROPOSAL AND THE CONTRACTORS NAME HAS BEEN ADDED TO THE PLANHOLDERS LIST.

THE FOLLOWING PAGES SHOW THE APPROXIMATE QUANTITIES OF WORK EXPECTED FOR THIS PROJECT. IN THE EVENT OF DISCREPANCIES BETWEEN THE FOLLOWING APPROXIMATE BID QUANTITIES AND THE QUANTITIES LISTED IN THE "OFFICIAL" BID PROPOSAL, THE "OFFICIAL" BID PROPOSAL SHALL GOVERN.

**BID PROPOSAL- DIGITAL
2022 CRACK SEAL PROJECT
BASE BID**

Item No.	Item Description	Total Price	Quantity	Unit	Unit Price
1	Crack Preparation & Sealing	\$200,000	_____	LF	\$ _____
(Unit Price Written in Words)					
UNIT BID PRICE:				\$ _____	
(Unit Bid Price Written in Words)					
<p>Note: The goal of this project is to perform \$200,000 worth of crack sealing on various roadways. The Contractor shall provide a total lineal footage of cracks that can be sealed for \$200,000 and then a unit price per lineal foot. The award will be based on the lowest unit price per lineal foot of sealed cracks (i.e., the resulting highest number of lineal feet of cracks that can be sealed with the \$200,000 budget).</p>					

BID BOND – DIGITAL

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

(Seal) _____ (Seal)
Bidder's Name and Corporate Seal Surety's Name and Corporate Seal

By:

Signature

By:

Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest:

Signature

Attest:

Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

SECTION III

GENERAL CONDITIONS

SECTION III
INCORPORATION OF EJCDC GENERAL CONDITIONS

Incorporation of the Montana Public Works and Engineers Joint Contracts Documents Committee Standard General Conditions and Supplementary Conditions to the General Conditions.

The following are hereby incorporated by reference and made a part of this Contract:

1. The Standard General Conditions of The Construction Contract as Prepared by the Engineers Joint Contract Documents Committee as found in the Montana Public Works Standard Specifications, Sixth Edition, April 2010.
2. The Supplementary Conditions to the General Conditions as found in the Montana Public Works Standard Specifications, Sixth Edition, April 2010.

The following Flathead County Supplementary Conditions are modifications to Montana Public Works and Engineers Joint Contract Documents Committee Standard General Conditions of the Construction Contract.

SECTION III

FLATHEAD COUNTY SUPPLEMENTARY CONDITIONS

The intent of this Section is to supplement the conditions outlined in the Standard General Conditions.

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1. INSURANCE

Without limiting any of the other obligations or liabilities of the CONTRACTOR, CONTRACTOR shall secure and maintain such insurance from an insurance company (or companies) authorized to write insurance in the State of Montana, with minimum "A.M. Best Rating" of A-, VI, as will protect the CONTRACTOR, the vicarious acts of subcontractors, the OWNER, and the respective directors, officers, partners, agents, employees and other consultants and subcontractors of each and any of all such additional insured's from claims for bodily injury (including sickness, disease and mental anguish), death and property damage which may arise from operations and completed operations under this Agreement. CONTRACTOR shall not commence work under this Agreement until such insurance has been obtained and certificates of insurance, with binders, and certified copies of the insurance policy(s) shall have been filed with the OWNER.

All insurance coverage shall remain in effect throughout the life of the Agreement, except that the CONTRACTOR shall maintain the Commercial General Liability Policy including product and completed operations coverage for a period of at least one year following the substantial completion date for property damage resulting from occurrences during the agreement period.

A. Contractor's Liability Insurance

Add the following new paragraphs immediately after Paragraph 5.04.B:

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Law or Regulations:
 - 1. Workers' Compensation and related coverages under Paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions.

- | | |
|---|--------------------|
| a. State | Statutory |
| b. Applicable Federal (e.g., Longshoremans) | Statutory |
| c. Employer's Liability | <u>\$1,000,000</u> |
2. CONTRACTOR'S General Liability Insurance under Paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions which shall include a Commercial General Liability insurance policy based on Insurance Services Office (ISO) Form CG 00 01 12 07 (or 12 04, or 10 01 edition dates). The coverage shall be based on an occurrence form and shall include, but not be limited to, coverage for Premises/Operations, Products/Completed Operations, Personal and Advertising Injury, Subcontractors, and Liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability policy form that modifies the standard general liability policy arising from pollution, explosion, collapse, underground property damage, subsidence, or work performed by subcontractors. The General Aggregate Limit shall apply separately to each of the Contractor's projects per the latest edition of Form CG 25 01, CG 25 03, or equivalent.
- | | |
|---|--------------------|
| a. GENERAL AGGREGATE PER PROJECT | <u>\$3,000,000</u> |
| b. Products-Completed | |
| Operations Aggregate | <u>\$3,000,000</u> |
| c. Personal and Advertising | <u>\$2,000,000</u> |
| d. Bodily Injury and Property Damage
(Each Occurrence) | <u>\$2,000,000</u> |
| e. Contractor's Liability Insurance under 5.04.A.3 through 5.04.A.6 may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance. Primary occurrence limit cannot be less than \$1,000,000.00. The deductible, if any, may not exceed \$5,000.00 per occurrence on property damage. | |
| f. In addition to other requirements in the General Conditions, Coverage will include at a minimum: | |
| 1. Premises - Operations | |
| 2. Operations of Independent Contractor | |
| 3. Contractual Liability | |
| 4. Personal Injury | |
| 5. Products and Completed Operations | |
| 6. NO additional exclusions that modify the standard ISO Commercial General Liability policy form CG 00 01 12 07 (or 12 04, or 10 01 edition dates) in regard to pollution, explosion, collapse, underground property damage, subsidence, or work performed by subcontractors will be acceptable. | |
| 7. Per Project Aggregate Endorsement | |
3. Automobile Liability under Paragraph 5.04.A.6 of the General Conditions:
- | | |
|--------------------------|--------------------|
| a. <u>Bodily Injury:</u> | |
| Each Person | <u>\$2,000,000</u> |
| Each Accident | <u>\$2,000,000</u> |
| <u>Property Damage:</u> | |
| Each Accident | <u>\$2,000,000</u> |
|
(or) | |
| b. Combined Single Limit | <u>\$2,000,000</u> |
- Coverage to be written with a symbol 1 (One) any auto basis to Include:

1. All Owned
2. Hired
3. Non-Owned

c. Contractor's Automobile Liability Insurance under 5.04.A.6 may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance. Primary occurrence limit cannot be less than \$1,000,000.00. The deductible, if any, may not exceed \$5,000.00 per accident.

4. The Contractual Liability coverage required by Paragraph 5.04.B.3 of the General Conditions shall provide coverage for not less than the following amounts:

Each Occurrence	<u>\$2,000,000</u>
Aggregate	<u>\$3,000,000</u>

- a. Contractual Liability Insurance under 5.04.B. 3 may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance. Primary occurrence limit cannot be less than \$1,000,000.00. The deductible, if any, may not exceed \$5,000.00 per occurrence.

5. OWNERS and CONTRACTORS Protective Policy - Purchased By CONTRACTOR:

In addition to the insurance required to be provided by Contractor under paragraph 5.04.A.1 through 5.04.A.6 inclusive, Contractor shall purchase and maintain a separate Owners and Contractors Protective Policy (OCP) to protect Owner against claims which may arise from operations under the Contract Documents, with limits of liability as specified below. The policy must be in the name of the Owner. This liability insurance shall include coverage for the respective directors, officers, partners, employees, agents and other consultants and subcontractors of all such additional insureds.

- | | |
|---|-----------------------|
| a. General Aggregate | <u>\$2,000,000.00</u> |
| b. Each Occurrence
(Bodily Injury and Property Damage) | <u>\$1,000,000.00</u> |

The OCP policy shall remain in effect until completion of the project and final payment is made to the Contractor and all times thereafter when the Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07 of the General Conditions.

The insurance policy will contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least forty-five (45) days prior written notice has been given to Owner and to each other additional insured (and the certificates of insurance furnished to Owner and each other additional insured will so provide).

6. Additional Insured's:

The CONTRACTOR'S insurance coverage shall name the OWNER and applicable landowners (if any) as an additional insured under Commercial General Liability, Automobile Liability and Excess or Umbrella policies. A list of the known additional insured's for this project is contained in the Special Provisions.

- a. With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6, inclusive, include the following as additional insured's on a primary, non-contributory basis. Use the following Additional Insured Endorsements:

ENTITY	FORM
Owner and Landowners - [See Special Provisions]	use Additional Insured Endorsements; CG 20 10 11 85 or combination of CG 20 10 10 01 & CG 20 37 10 01 or CG 32 87 05 10 & CG 32 90 05 10 Montana only – or subsequent editions; Additional insured must include On-going Operations as well as Completed Operations.

B. Cancellation Notice

Amend paragraph 5.04.B.4 of the General Conditions by striking out the words “30 days” and replacing them with the words “45 days” and as so amended paragraph 5.04.B.4 remains in effect.

C. Reserved

2. BONDING

In addition to all bonding requirements indicated in Article 5 of the General Conditions, all Contractors shall be responsible for meeting the Montana Workers Surety Bond Requirements per MCA 18-2-201.

3. ESTIMATED QUANTITIES

All estimated quantities stipulated in the Proposal and other Contract Documents are approximate and are to be used only (a) as a basis for estimating the probable cost of the work; and (b) for the purpose of comparing proposals submitted for the work. It is understood and agreed that the actual amounts of work done, and materials furnished under unit price items may vary substantially from such estimated quantities. The actual quantities will depend on the conditions encountered at the time the work is performed, and the unit prices apply, subject to the exceptions in Flathead County Supplementary Condition 4 - Unit Price Work.

4. DISPUTE RESOLUTION

Paragraph 16.01 of the General Conditions is hereby deleted in its entirety and the following is substituted in its place:

- A. *Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. Timely submission of the request shall stay the effect of Paragraph 10.05.E.*
- B. *Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.*
- C. *If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:*
 1. *elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or*
 2. *agrees with the other party to submit the Claim to another dispute resolution process; or*

3. *gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.*

5. PROJECT MEETINGS

- 5.1 Preconstruction Conference. After the Contract has been awarded, but before the start of construction, a preconstruction conference will be held at a time and place mutually agreed to by the parties. The conference shall be attended by the following: the Contractor and his superintendent; Representatives of the Owner; and others as appropriate.

Unless previously submitted, the Contractor shall bring the following submittals to the conference: a list of proposed Subcontractors and the proposed construction schedule. Work shall not start prior to the Owner's receipt of these submittals.

6. GOVERNING STANDARDS AND REGULATORY REQUIREMENTS

- 6.1 Jurisdiction. The performance of this work shall be under the jurisdiction of the following agencies, departments, and standards and compliance with the requirements thereof is required:

Federal Level: United States law; United States Corps of Engineers; Environmental Protection Agency.

State Level: Montana Code Annotated; Montana Department of Environmental Quality; Dept. of Fish, Wildlife & Parks (SPA); Department of State Lands; the Department of Natural Resources and Conservation; the Montana Building Codes Division; Uniform Building Code, (latest edition); Uniform Plumbing Code, (latest edition); Uniform Mechanical Code, (latest edition); Uniform Fire Code (latest edition); National Electric Code, (latest edition).

Permits. The Contractor must also comply with the requirements of any permits obtained for the project by the Contractor. The Contractor shall be responsible for obtaining any permits regarding the discharge of any water related to the construction of this project (this includes a Montana Department of Environmental Quality 3A Permit).

Local Level: City and/or County ordinances and regulations.

- 6.2 Contractor's Responsibility. The Contractor shall familiarize himself with the requirements of all regulatory agencies pertaining to the performance of the work on the project. The Contractor shall perform all work in accordance with the regulatory requirements. Any conflict between the Contract Documents and the regulatory requirements shall be brought to the immediate attention of the Owner.

7. SUBMITTALS

- 7.1 Construction Schedule. The Contractor shall submit to the Owner for review a schedule of the proposed construction operations. The construction schedule shall indicate the sequence of the Work, the time of starting and completion of each part, and at a minimum one entry for each bid item and trade involved therein.
- 7.2 Approval of Subcontractors. Contractor shall submit a list of Subcontractors to be used on the project and it shall be acceptable to the Owner prior to starting work. For each Subcontractor include name, address, phone, type of work, registration number, approximate contract value and a list of projects completed within the last 5 years by the Subcontractor.

8. WEED CONTROL

Prior to mobilizing equipment on the project site, the Contractor shall clean his equipment and vehicles to assure no weeds are imported. If there is an abnormal growth of noxious weeds on a project site after construction as determined by the Owner or local weed control authority, the Contractor will be responsible for weed control for the duration of the contract warranty.

9. REGULAR HOURS AND WEATHER DAYS

- 9.1 Regular Hours. The regular work week shall consist of five working days, Monday through Friday, with regular working hours of 7:00 a.m. to 5:00 p.m. Written requests to perform any work outside of the regular work week or normal working hours must be delivered to the Owner no less than 48 hours prior to the planned start of the work. Contractor may not work other than regular hours without written approval from Owner.
- 9.2 Weather Days. In the event inclement weather or the aftermath of inclement weather prevents the Contractor from performing any compensable work for a minimum of 60% of the Regular day or other work period approved by the Owner, he may request a credit for that day. No credit for inclement weather will be allowed on non-working days. A request for a weather day must be submitted to the Owner by the end of each calendar day being requested.
- 9.3 Standby Time. No separate payment will be made for standby time, inactive periods beyond Contractor control or inactive periods resulting from requirements of this Contract. Such time will be considered incidental to the required work. Standby time can be expected but is not limited to waiting for completion of other related contractor's work.

10. CONSTRUCTION PROGRESS

- 10.1 The Contractor shall maintain suitable progress on the job at all times. This shall include the presence of full crews with superintendents effectively operating with proper equipment and tools. In the event the Owner is dissatisfied with the progress, performance, or timing of the work, the Owner will give the Contractor written notice in which the Owner will specify in detail the cause of dissatisfaction. Should the Contractor fail or refuse to remedy the matters indicated and fail to submit a detailed schedule indicating how the Contractor shall complete the work in the Contract Time remaining within ten (10) days after the written notice is received by the Contractor, the Owner will have the right to take control of the work and either make good the deficiencies of the Contractor itself or direct the activities of the Contractor as the Owner deems advisable, or the Owner may terminate the Contract. In either event, the Owner will be entitled to collect from the Contractor all expenses in completing the work.
- 10.2 Should an unforeseen or changed site condition arise on a portion of the work, the Contractor shall immediately notify the Owner in writing. The Owner will work with the Contractor to resolve such a condition in a fair and equitable manner as soon as possible. However, the Contractor shall continue work on any or all portions of the work that are not directly affected by the unforeseen or changed site conditions or, when directed by the Owner, the Contractor shall continue work on the disputed portion of the work in conformance with the appropriate section of these General Requirements. No claim for additional Contract Price or Time for standby will be allowed. Failure or refusal of the Contractor to continue such work will be cause for the Owner to take control of the work or terminate the Contract as herein provided and to employ such additional help as the Owner deems advisable to maintain progress. The costs of any such work will be deducted from the Contractor's monthly progress payments. The Contractor shall be subject to liquidated damages for any overrun of the Contract Time resulting from his failure or refusal to continue work as described above.

11. REPAIR AND REPLACEMENT QUALITY

- 11.1 General. Items requiring repair or replacement due to damage or removal or otherwise necessitated in the course of pursuance of the work, and which are not otherwise specified herein, shall be repaired or replaced to the following levels of quality.
- 11.2 Other Items. Repair or replacement of other items not covered by the preceding shall be to the standards required by the owner of the item and at the owner's option may be performed by the owner of the item with the full cost assessed to the Contractor.
- 11.3 Decisions Regarding Repair Versus Replacement. The decision of repair versus replacement of an affected item shall be at the discretion of the Owner upon consultation with the owner of the item. The decision shall be based on a determination of whether repaired quality can equal the quality of a replacement installation. The Owner's authority shall be final in this regard.
- 11.4 Limits of Repair or Replacement. The limits of areas to be repaired or replaced shall be determined by the Owner in the field based on the extent of damage or removal sustained. The determination shall be based on insuring that all damaged or removed portions of the existing installation are fully restored. The authority of the Owner in this regard shall be final. All work effects outside limits as described in these Contract Documents are subject to repair and replacement quality as described herein.
- 11.5 Repair by Party Owning or Maintaining Item. The party owning or maintaining the item under consideration shall have the exclusive right to undertake repair or replacement themselves and charge the Contractor for full costs incurred or to direct and supervise the Contractor to repair or replace the item to their standard of quality. The authority of the owner of the item shall be final in this regard.

12. REJECTED WORK

Any defective work or nonconforming materials or equipment that may be discovered shall be removed and replaced by work which shall conform to the provisions of the Contract Documents. Any material condemned or rejected shall be removed at once from the project site. Failure on the part of the Owner to condemn or reject bad or inferior work or to note nonconforming materials or equipment on Contractor's submittals shall not be construed to imply acceptance of such work. The Owner shall reserve and retain all its rights and remedies at law against the Contractor and its Surety for correction of any and all latent defects discovered.

The Owner will have the authority to reject work which does not conform to the Contract Documents and will provide the Contractor with the list of defective work and nonconforming materials or equipment.

13. TRAFFIC CONTROL

The Contractor shall schedule his construction operations in a manner which will assure that: 1) the safety and convenience of motorists and pedestrians, and the safety of construction workers, are adequately met at all times; and 2) the project is completed in a manner most beneficial to the project as a whole. All signing and striping shall conform to the standards set forth in the Manual of Uniform Traffic Control Devices (MUTCD).

Traffic control shall be provided in full compliance with MUTCD during materials hauling and equipment operation or transport along public roadways. Control shall include necessary signing, flag-persons, barricades, and hazard markers. At least one-way traffic shall be maintained at all times with continuous passage for emergency vehicles from either direction. In special cases as noted in the Special Provisions, maintenance of two-way traffic may be required. At the conclusion of daily construction activities, the

Contractor shall insure that proper traffic control measures remain in effect overnight and through the weekend. This includes protecting any open excavations or other hazards.

Prior to any construction, the Contractor shall prepare and submit a detailed traffic control plan in accordance with the Submittals Section. The plan shall include, at a minimum, the following:

- Calendar time periods of proposed traffic interruptions and control.
- Locations of all signs, markers, barricades, and other traffic control devices to be used.
- Specifications for signs, markers, and barricades including references to MUTCD.
- Locations for flag-persons where used, along with anticipated dates and hours of use.
- Routing of any detours required.

The traffic plan will be subject to review and approval by the Montana Department of Transportation for roads under their jurisdiction, by the local county for county roads, by the local municipalities for municipal roads, and by the U.S. Forest Service or Bureau of Land Management for roads under their control. These approvals will be in addition to that provided by the Owner in accordance with the Submittals Section. No work may commence until all approvals of the traffic plan have been secured.

14. PUBLIC ADVISORIES

The Contractor shall inform the public, emergency services and schools of all planned work that may affect traffic flow, pedestrian movements, and access to residences or businesses. Contractor shall provide a brief description of the work, the intended time period of activities and any effects on traffic to emergency services, the schools, local newspapers, radio stations, and TV stations between 48 and 72 hours prior to beginning work or implementing traffic control changes that will alter traffic movements. Provide 24-hour contact information for the Contractor's Construction Superintendent on all notices in case of emergencies; provide daytime phone number for Contractor on all notices for general questions or concerns. The following is a list of contacts that must be informed, at a minimum:

KJJR/KDBR, 406-755-8700	Daily Interlake, 406-755-7000
KCFW, 406-755-5239	KALS, 406-752-5257
KPAX, 406-756-5888	KOFI, 406-755-6690
KEGZ, 406-752-2600	

15. RESERVED

16. CONTRACT DOCUMENT DISCREPANCIES

In the event that any provision of one Contract Document conflicts with the provision of another Contract Document, the provision in that Contract Document first listed below shall govern, except as otherwise specifically stated:

- Agreement
- Addenda to Contract Documents
- Performance and Labor & Materials Bonds
- Bid Proposal
- Bid Security
- Special Provisions
- Invitation to Bid
- Instructions to Bidders
- Technical Specifications
- Flathead County Supplementary Conditions
- Minimum Standards for Design and Construction for Flathead County, Montana
- General Conditions

17. PROJECT CLOSE-OUT

17.1 Once the Contractor has completed construction, a substantial completion inspection is held to assess any remaining or corrective work and permit close-out of the Contract. The following conditions must be met before the substantial completion inspection is scheduled:

- Work must be substantially complete and fit for its intended purpose.
- Contractor must file a Contractor's Certificate of Completion (form found under Miscellaneous Forms in Appendix A) requesting a substantial completion inspection by the Owner.

17.2 Following the inspection, the Owner prepares and signs a Certificate of Substantial Completion and attaches a list of any remaining or corrective work needed based on the inspection. The Certificate is sent to the Contractor, who must complete the listed work. After the Owner verifies its completion, the construction is considered fully complete.

17.3 Prior to final payment including release of retainage, the Contractor must furnish these items to the Owner:

- Completed Affidavit on Behalf of Contractor (lien release) using the form provided in the Contract Documents under Miscellaneous Forms.
- Executed copies of any pending Change Orders or claims.
- The final Change Order shall reconcile bid quantities to reflect actual quantities for projects containing unit price items.
- Final Payment Request for balance of Contract Price due.
- Completed Consent of Surety Company to Final Payment using the form provided in the Contract Documents under Miscellaneous Forms.
- Certification of Payment of Prevailing Wage Rates as/if required by agencies providing funding for the project.

Upon receipt and approval of these items, the Owner will process final payment. The retainage will be released with the final payment.

18. CLEANUP

18.1 Scope. This section covers the final preparations required to place the various components into operation.

18.2 Final Conditioning. Before final acceptance is made, the entire work shall be cleaned and conditioned. This shall consist of the following:

A. Sweeping and removing trash and debris resulting from the project;

18.3 Removal of Construction Equipment, Tools, and Supplies. At the completion of this Contract, before acceptance of the work by the Owner, the Contractor shall remove all of his equipment, tools, and supplies from the property of the Owner. Should the Contractor fail to remove such equipment, tools, and supplies, the Owner shall have the right to remove them at the Contractor's expense.

SECTION IV

SPECIAL PROVISIONS

SECTION IV
SPECIAL PROVISIONS

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1. PROJECT DESCRIPTION

The project consists of placing crack sealing throughout the Flathead County Roadway System.

Various roadways will be receiving crack sealing improvements in Flathead County, and the Contractor should be prepared to mobilize equipment on a daily basis.

2. SITE INSPECTION

All Bidders should satisfy themselves as to the construction conditions by personal examination of the site of the proposed work and any other examination and investigation that they may desire to make as to the nature of the construction and the difficulties to be encountered.

3. PROJECT RELATED CONTACTS

Wherever in these Documents the word "Owner" appears, it shall be understood to mean the **Flathead County**.

Owner: **Flathead County**
 Road & Bridge Department
 1249 Willow Glen Drive
 Kalispell, MT 59901
 Attn: Dave Prunty
 Telephone: (406) 758-5790

4. CONTRACT TIME AND LIQUIDATED DAMAGES

4.1. **Contract Time:** Contract time for this project is **21 Calendar Days** and all work to be completed by **June 30, 2022**.

4.2. **Liquidated Damages:** The Owner shall be entitled to liquidated damages for failure of the Contractor to complete the work within the specified contract time. Work will be considered complete once substantial completion has been accomplished and all subsequent punch list items have been satisfactorily completed.

- a The Contractor further agrees to pay liquidated damages for failure to complete the work within the specified contract time and for expenses incurred by the Owner.
- b As compensation for non-use, the Contractor shall be assessed a liquidated damage, of an amount of **\$500.00**, per calendar day for each day that the work remains uncompleted beyond the contract period.

5. BONDING

In addition to all bonding requirements indicated in Article 5 of the General Conditions, all Contractors shall be responsible for meeting the Montana Workers Surety Bond Requirements per MCA 18 2 201.

6. CERTIFICATES OF INSURANCE

The Contractor is responsible for providing the Owner with complete copies of policies and Certificates of Insurance as discussed in Paragraph 5.03.A of the General Conditions.

6.1. Failure of Owner to demand such certificates or other evidence of full compliance with the insurance requirements outlined in the General Conditions and Supplementary Conditions, or

failure of Owner to identify a deficiency from evidence provided, shall not be construed as a waiver of Contractor's obligations to maintain such insurance.

- 6.2. By requiring the insurance and insurance limits specified, Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 6.3. In addition to providing the Certificates of Insurance, the Contractor shall also provide the Owner with complete copies of the policies and endorsements required.

7. ADDITIONAL INSURED

In accordance with the insurance requirements outlined in the General Conditions and Supplementary Conditions the following entities shall be included as additional insureds:

OWNER: **Flathead County**

Use the Additional Insured Endorsement CG 20,32 or equivalent acceptable to the Owner.

8. PRECONSTRUCTION CONFERENCE

After the Contract has been awarded, but before the start of construction, a preconstruction conference will be held at a time and place mutually agreed to by the parties. The conference shall be attended by the Owner, Contractor, and others as appropriate.

The following individuals are required to attend the Pre-Construction Meeting:

- Contractors Designated Project Representative – Construction Superintendent

Unless previously submitted, the Contractor shall bring the following submittals to the conference: a list of proposed Subcontractors and the proposed construction schedule. Work shall not start prior to the Owner's receipt of these submittals.

9. SAFETY STANDARDS

The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of this contract a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

The duty of the Owner to conduct construction review of the work does not include review or approval of the adequacy of the Contractor's safety program, safety supervisor, or any safety measures taken in, on, or near the construction site.

The Contractor, as a part of his safety program, shall maintain at his office or other well-known place at the jobsites, safety equipment applicable to the work as prescribed by the aforementioned authorities, all

articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the jobsite.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner. In addition, the Contractor must promptly report in writing to the Owner all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Owner, giving full details of the claim.

The Contractor shall take all necessary provisions for safe handling of chemical amendments and potentially hazardous wastes, including apprising himself of hazards, developing safety plans, providing emergency and decontamination services, and developing spill containment procedures.

10. OSHA REGULATIONS

The Contractor will be required to comply with current Occupational Safety and Health Administration Construction Standards for Excavations.

Any conflicting information between OSHA documents and these Contract Documents shall be revised so that the OSHA document requirements supersede and take precedence over all other conflicting information. The Contractor shall be required to obtain copies of the OSHA document and to complete a review of the same to avoid misinterpretation of their regulations.

Hazardous Atmospheres: The Contractor shall prevent employee exposure to potentially harmful levels of contaminants and assure acceptable OSHA worker safety procedures are implemented.

11. PAYMENT TO CONTRACTORS

11.1. Scope. This section supersedes the sections of the General Conditions pertaining to payments to the Contractor, to be in compliance with MCA 28-2-2103 as amended on October 1, 2003. If an alternate billing, approval, and/or payment cycle is required for this project those provisions are discussed in the "Instructions to Bidders" section of these Contract Documents and shall supersede this section on Payments to the Contractor.

11.2. Application for Partial and Final Payment. The Contractor shall prepare and submit two (2) copies of the Application for Payment on a monthly billing cycle. At the preconstruction conference it will be agreed upon which day of the month this application should be submitted so that it coincides with the Owner's billing approval and payment schedule. After the first partial payment request is submitted the Contractor shall submit their subsequent applications on the same date each month for the duration of the project.

After the Contractor submits their Application for Payment the Owner will have twenty-one (21) calendar days to review and approve payment for the entire amount of the request, or the undisputed portion of the request. Terms which are in dispute will be documented in writing and provided to the Contractor for correction and resubmission on subsequent payment requests. The undisputed portion will be approved for payment and will be paid within seven (7) calendar days after approval. Five percent (5%) of all partial payments will be withheld from payment until the completion of the project as discussed below.

The Final Application for Payment, including release of the five percent (5%) retainage, may only be submitted after the Owner has signed the Certificate of Substantial Completion as described in Flathead County Supplementary Condition 17.

12. FEES AND PERMITS

- 12.1. Permit for construction within right-of-way will be the Notice to Proceed.
- 12.2. Permits related to discharging construction water will be secured by the Contractor.

It will be the Contractor's responsibility to comply with all conditions stated within applicable permits. All Contractors and Subcontractors shall familiarize themselves with the permits and conditions associated with this project.

13. PROTECTION OF ADJACENT IMPROVEMENTS

Retain and protect all adjacent improvements not called for removal on the drawings. Restore all damaged items to pre-existing condition at no additional cost to the owner.

14. CONSTRUCTION SUPERINTENDENT

The Contractor shall designate a qualified superintendent to be on site or be immediately available by phone during construction operations. The superintendent shall have authority to make field changes as directed.

15. GENERAL CONSTRUCTION REQUIREMENTS

- 15.1. Quality Assurance. The Owner will monitor the construction of work covered by this section to determine if the work is being performed in accordance with the contract requirements. The Owner does not have the authority or the means to control the Contractor's methods of construction. It is, therefore, the Contractor's responsibility to utilize all methods, equipment, manpower, and other means necessary to assure that the work is installed in compliance with the Specifications, and laws and regulations applicable to the work.
- 15.2. Tolerances. Construction tolerances for the work, shall be as outlined in the Technical Specifications.
- 15.3. Construction Limits. Where construction limits, public rights-of-way, project easement areas or project construction permit areas, are not specifically called out on the Drawings, the construction limit shall be the width of the existing roadway. Disturbance and equipment access beyond this limit is not allowed without the written approval of the Owner of the affected property. If so approved, disturbance beyond construction limits shall meet all requirements imposed by the landowner; this includes existing roads used and/or improved as well as the construction of new access roads. Reclamation required by the landowner on access roads beyond the construction limits shall be performed by the Contractor at no additional cost to the Owner.
- 15.4. Areas of Disturbances. Approved areas of disturbance are those areas disturbed by construction activities within the construction limits and along designated or approved access routes. Such areas shall require reclamation and revegetation operations, including grading to the original contours, topsoiling with salvaged or imported topsoil, seeding, fertilizing, and mulching as specified herein.

Other areas that are disturbed by the Contractor's activities outside of the limits noted above will be considered as site damage or unapproved areas of disturbance subject to the repair and replacement quality as specified herein. Such areas shall require the reclamation and revegetation operations noted above and as specified herein, but costs of such work shall be borne by the Contractor. This includes areas selected by the Contractor outside the defined construction limits for mobilization, offices, equipment, or material storage.

The Contractor shall order sufficient materials to perform the required work for all areas of disturbance. The Contractor will pay for the required revegetation work in all unapproved areas of disturbance.

16. DIESEL FUEL PRICE ADJUSTMENT

There will be no Contract price adjustment up or down due to an increase or decrease in fuel cost.

17. NOTICES

Notices. It will be the responsibility of the Contractor to notify the following individuals for the following items:

- Owner and emergency services of any temporary street closures or traffic control activities.
- Contractor to place "NO PARKING" signs as needed to ensure vehicles are not in the way of construction progress.

All notices shall be submitted for review and approval to the Owner a minimum of 24 hours prior to required notice period.

18. MAINTENANCE OF ACCESS

The Contractor shall provide "TWO-LANE, TWO-WAY TRAVEL" through the entire worksites at night or when construction activities have ceased. Access to adjacent residences/businesses may be restricted. The Contractor shall NOT close any access, in its entirety, for longer than four (4) hours, and only after 48-hour advanced notice to the Owner and resident/business owner. The Contractor will be responsible for maintaining only ONE access to each residence/business. The Contractor shall coordinate all street closures in advance with the Fire Department, Sheriff Office, the Public Works Director, County Road and Bridge Department, and the Montana Department of Transportation. The Contractor shall notify the adjacent owners, Sheriff Department, Fire Department, and medical services at least 48 hours prior to closure.

19. DISPOSAL OF USED WATER

Disposal of used water shall be the responsibility of the Contractor. Discharges to the surface are subject to permit and regulatory requirements.

20. WATER POLLUTION

The Contractor shall comply with all laws and regulations of the Montana Department of Environmental Quality and with all other federal, state, and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

Particular care will be required to prevent magnesium chloride from entering streams or watercourses. Under no circumstances will equipment be allowed to operate in or discharge to flowing stream channels.

21. MATERIAL DISPOSAL

Haul and waste all excess material to a legal site and obey all state, county, and local disposal restrictions and regulations.

22. USE OF COMPLETED PORTIONS

The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use causes refinishing of completed work, the Contractor shall be entitled to such extra compensation or extension of time or both, as agreed by the Owner.

23. CLEANUP

Cleanup for each item of work shall be fully completed and accepted before the item is considered final. If the Contractor fails to perform cleanup within a timely manner the Owner reserves the right to shut down construction activities

24. MATERIAL SOURCES AND CONSTRUCTION WATER

The Contractor shall be responsible for locating all necessary material sources necessary to complete the work. The Contractor shall be responsible for meeting all transportation and environmental regulations as well as paying any royalties. The Contractor shall provide the Owner with written approvals of landowners from whom materials are to be obtained prior to approval.

The Contractor may use materials from any source, providing the materials have been tested through representative samples and will meet the Specifications.

25. CRACK PREPARATION AND SEALING APPLICATION

All cracks previously unsealed that are 1/8-inch and larger shall be routed, typically 3/4-inch wide by 1/2-inch deep. In locations of ruts or irregular asphalt surface, routing shall be 3/4-inch deep. Newly routed cracks and previously sealed cracks with failed sealant will be blown clean with compressed air and sealed such that the sealant adheres to the **entire vertical face**, leaving no portion of the vertical edge visible. The sealant may be level across the crack's edge or exhibit a slight depression (<1/8") in the middle of the crack width.

Routers shall be equipped with **new carbide bits**. Regular rotation and changing of bits will be required if the routers are not cutting a square cornered reservoir. Compressed air will be supplied from a compressor capable of at least **125 psi** of pressure and must be equipped with **moisture and oil filters**. Kettles/melters shall be of the indirect heat type and equipped with agitators. Routed cracks shall be sealed on the same day as routing, excepting weather limitations. Operators must know the recommended application temperature of the product and the safe heating temperature. They shall be equipped with temperature monitoring equipment such as **infrared heat guns**. **Clean, dry, and square-cornered reservoirs are of the utmost importance for successful sealant performance; therefore, this condition will be strictly adhered.**

The Contractor shall be available for crack preparation and sealing application during May and June 2022. The Contractor is responsible for traffic control during the application process. The Contractor is also responsible for any damage resulting from work performed under this contract, including but not limited to: roadways, culverts, driveways, fencing, utilities, mailboxes, etc. Material Safety Data Sheets (MSDS) shall be supplied by the Contractor to the County for products utilized as preparation and sealing agents.

Contractors shall submit a work plan detailing their anticipated scheduling and order of roads to be treated prior to the Notice to Proceed. **Table 25-1** provides the Roadway Name, Length of Road (in miles), Estimate Lineal Feet (LF) of Crack Sealing (based on average of 6,000 linear feet per mile of road), and Notes for Start/Stop Locations of the crack preparation and sealing applications. The estimated linear footages of crack preparation and sealing shown in the table are for reference only.

The roadways in **Table 25-1** are top priority and are to be completed in order. The owner has made efforts to geographically cluster the roads but is amenable to minor modifications to the order to assist mobilization of crews and equipment. A map showing the locations of each roadway in **Table 25-1** is located in **Appendix B**.

The Owner is planning on Chip Sealing many of the roadways shown. The Owner will begin performing chip sealing on July 19th, 2022. **The Contractor must complete all work by June 30th, 2022.**

At the end of each day's work the Contractor shall contact the Owner to and provide a summary of work completed that day. The summary shall include the names of roads that received crack seal applications, the total lineal footage of crack sealing applied, and the total project budget spent to date.

After the crack sealing, the Contractor shall place a material to ensure that fresh sealant does not adhere to the tires of vehicles.

Table 25-1

Priority	Road Name	Miles	Est. LF of Cracks	Description	
				Start	End
1	Voerman Road	2.16	12,960	Whitefish city limits	Dillon Road
2	Dillon Road	2.03	12,180	Voerman Road	Highway 40
3	Monegan Road	1.97	11,820	Dillon Road	JP Road
4	JP Road	0.52	3,120	Whitefish city limits	Monegan Road
5	Haskill Drive	0.41	2,460	Dillon Road	Dead end
6	East Edgewood Drive	4.97	29,820	Whitefish city limits	Tamarack Lane
7	Tamarack Lane	3.53	21,180	E. Edgewood Drive	Columbia Falls city limits
8	Woodland Road	0.51	3,060	Tamarack Lane	End of maintenance
9	Meadow Lake Boulevard	0.85	5,100	Columbia Falls city limits	Tamarack Lane
10	Rocky Lane	0.64	3,840	Meadow Lake Boulevard	12 th Avenue Northwest
11	North Hilltop Road	1.54	9,240	Highway 2	End of maintenance
12	Dawn Drive	1.02	6,120	N. Hilltop Road north	N. Hilltop Road south
13	Parkview Way	0.14	840	Terrace Drive	Dawn Drive
14	Terrace Drive	0.30	1,800	Dawn Drive	Dawn Drive
15	Aluminum Drive	0.77	4,620	N. Fork Road	End of public roadway
16	15 th Street East	0.23	1,380	N. Fork Road	End of maintenance
17	14 th Street East	0.24	1,440	N. Fork Road	End of maintenance
18	13 th Street East	0.23	1,380	N. Fork Road	End of maintenance
19	Frontage Road	0.24	1,440	End of maintenance	13 th Street East
20	Dorothy Street	0.37	2,220	End of maintenance	Aluminum Drive
21	Florence Street	0.26	1,560	End of maintenance	Aluminum Drive
22	Marjorie Street	0.23	1,380	End of maintenance	Aluminum Drive
23	Southfork Road	1.52	9,120	Old Highway 2	Spotted Bear Road
24	Spotted Bear Road	2.08	12,480	South Fork Road	Old Highway 2
25	Columbia Falls Stage	10.60	63,600	Highway 35	River Road
26	River Road	0.77	4,620	Columbia Falls Stage	Highway 2
27	Edgewood Road	0.41	2,460	E. Evergreen Drive	Solberg Drive
28	Spring Creek Drive	0.42	2,520	Highway 2	Solberg Drive
	TOTAL=	38.96	233,760		

26. MEASUREMENT AND PAYMENT

- 26.1. Scope. This section describes the method of measurements and basis of payment for all work covered by the Contract Documents. For the purposes of this Contract, this Measurement and Payment Section shall govern and take precedence over all other references to measurement and payment (with exception to any addenda) referenced in these specifications.
- 26.2. Bid Prices.
- The bid price for each item of the Contract in the Bid Proposal shall cover all work shown on the Drawings and required by the specifications and other Contract Documents. All costs in connection with the work, including furnishing all materials, equipment, supplies, and appurtenances; and performing all necessary labor and supervision to fully complete the work, shall be included in the unit and/or lump sum prices bid in the Official Bid Proposal. The amounts shown on the Official Bid Proposal shall be the contract price.
 - No item that is required by the Contract Documents for the proper and successful completion of the work will be paid for outside of or in addition to the prices submitted in the Official Bid Proposal. All work not specifically set forth as a pay item in the Official Bid Proposal shall be considered a subsidiary obligation of the Contractor and all costs in connection therewith shall be included in the prices bid.
- 26.3. Retainage. Retainage in the amount of 5% will be withheld from each progress payment.
- 26.4. Estimated Quantities. Any estimated quantities stipulated in the Official Bid Proposal or other Contract Documents are approximate and are to be used; (1) only as a basis for estimating the probable cost of the work and (2) for the purpose of comparing the bids submitted for the work.
- 26.5. Incidentals. The following measurement and payment sections do not necessarily name all the incidental items required by the Contract Documents to complete the work. The cost of all such incidentals shall be included in the various related bid items. Final payment will not be made until the work is complete and accepted by the Owner.
- 26.6. Measurement and Payment

<u>Bid Item No.</u>	<u>Description</u>
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1.	<u>Crack Preparation and Sealing:</u>
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- General: Includes the furnishing and placement of crack sealing as road repair to various roads in Flathead County.
- Work Included:
 - All labor, tools, equipment, materials, and incidentals necessary to complete the work as specified;
 - Provide appropriate traffic control, including signage, flagmen, pilot car, etc.;
 - Provide all notices before and after roadway treatments;
 - Routing of cracks;
 - Cleaning of cracks;
 - Placement of backer rod if required;
 - Placement of crack seal material;
 - Measuring and documenting crack sealing completed quantities;
 - Cleanup;
 - Mobilization, Bonding, and Insurance;

- Measurement: Crack Preparation and Sealing is measured by the linear foot (LF) of crack prepared and sealed.
- Payment: Payment shall be by the linear foot (LF) of crack prepared and sealed.

SECTION V

TECHNICAL SPECIFICATIONS

SECTION V
TECHNICAL SPECIFICATIONS

Incorporation of Montana Public Works Technical Specifications.

The Technical Specifications as found in Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, are hereby incorporated by reference and made a part of this Contract.

Flathead County Technical Specifications.

In addition to the MPW Standard Specifications the following are the Flathead County Technical Specifications.

SECTION 106 – Acceptance of Work

SECTION 218 – Crack Preparation and Sealing

SECTION 106. — ACCEPTANCE OF WORK

106.01 Conformity with Contract Requirements.

References to standard test methods of AASHTO, ASTM and other recognized standard authorities refer to the methods in effect on the date of solicitation for bids.

Perform work according to the contract requirements. Perform all work to the lines, grades, cross-sections, dimensions, and processes or material requirements shown on the plans or specified in the contract.

Incorporate manufactured materials into the work according to the manufacturer's recommendations or to these specifications, whichever is stricter.

Plan dimensions and contract specification values are the values to be strived for and complied with as the design values from which any deviations are allowed. Perform work and provide material that is uniform in character and reasonably close to the prescribed value, or within the specified tolerance range. The purpose of a tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons.

The County may inspect, sample, or test all work at any time before final acceptance of the project. When the County tests work, copies of test reports are furnished to the Contractor upon request. County tests may or may not be performed at the work site. If Contractor testing and inspection is verified by the County, the Contractor's results may be used by the County to evaluate work for acceptance. Do not rely on the availability of County test results for process control.

Acceptable work conforming to the contract will be paid for at the contract unit bid price. Three methods of determining conformity and accepting work are described in Subsections 106.02 to 106.04 inclusive. The primary method of acceptance is specified in each Section of work. However, work may be rejected at any time it is found by any of the methods not to comply with the contract.

Remove and replace work that does not conform to the contract, or to prevailing industry standards where no specific contract requirements are noted, at no cost to the County.

As an alternative to removal and replacement, the Contractor may submit a written request to:

- (a) Have the work accepted at a reduced price; or
- (b) Be given permission to perform corrective measures to bring the work into conformity.

The request must contain supporting rationale and documentation. Include references or data justifying the proposal based on an evaluation of test results, effect on service life, value of material or work, quality, aesthetics, and other tangible engineering basis. The County will determine disposition of the nonconforming work.

When standard manufactured items are specified (such as fence, wire, plates, rolled shapes, pipe conduits, etc., that are identified by gauge, unit mass, section dimensions, etc.), the identification will be considered to be nominal masses or dimensions. Unless specific contract tolerances are noted, established manufacturing tolerances will be accepted.

106.02 Visual Inspection. Acceptance is based on visual inspection of the work for compliance with the contract and prevailing industry standards.

106.03 Certification. For material manufactured off-site, use a manufacturer with an ISO 9000 certification or an effective testing and inspection system. Require the manufacturer to clearly mark the material or packaging with a unique product identification or specification standard to which it is produced.

Other than references in or to the FAR or Federal Law, when these Standard Specifications reference certifications; certificates; or certified documents, equipment, or individuals, these references are not certifications under Section 4301 of Public Law 104-106, National Defense Authorization Act for Fiscal Year 1996. These references refer to documentation of non-regulatory, peripheral contract requirements that are required to be validated by an individual or organization having unique knowledge or qualifications to perform such validation.

Material accepted by certification may be sampled and tested at any time. If found not in conformance with the contract, the material will be rejected whether in place or not.

One of the following certifications may be required:

(a) Production certification. Material requiring a production certification is identified in the Acceptance Subsection of each Section. Require the manufacturer to furnish a production certification for each shipment of material. Include the following with each production certification:

- (1) Date and place of manufacture;
- (2) Lot number or other means of cross-referencing to the manufacturer's inspection and testing system; and
- (3) Substantiating evidence that the material conforms to the contract quality requirements as required by FAR 46.105(a) (4), including all of the following:
 - (a) Test results on material from the same lot and documentation of the inspection and testing system;
 - (b) A statement from the manufacturer that the material complies with all contract requirements; and
 - (c) Manufacturer's signature or other means of demonstrating accountability for the certification.

(b) Commercial certification. When a certification is required, but not a production certification, furnish one commercial certification for all similar material from the same manufacturer.

A commercial certification is a manufacturer's or Contractor's representation that the material complies with all contract requirements. The representation may be labels, catalog data, stamped specification standards, or supplier's certifications indicating the material is produced to a commercial standard or specification.

106.04 Measured or Tested Conformance. Provide all necessary production and processing of the work and control performance of the work so that all of the work complies with the contract requirements.

Results from inspection or testing shall have values within the specified tolerances or specification limits. When no tolerance values are identified in the contract, the work will be accepted based on customary manufacturing and construction tolerances.

106.05 RESERVED

106.06 RESERVED

106.07 Partial and Final Acceptance. Maintain the work during construction and until the project is accepted. Damage caused by the Contractor prior to final acceptance of the entire project will be repaired at the Contractor's expense.

(a) Partial acceptance. When a separate portion of the project is completed, a final inspection of that portion may be requested. If the portion is complete and in compliance with the contract, it may be

accepted. If accepted, the County will relieve the Contractor of further responsibility for maintenance of the completed portion. Partial acceptance does not void or alter any of the terms of the contract.

When public traffic is accommodated through construction and begins using sections of roadway as they are completed, continue maintenance of such sections until final acceptance.

(b) Final acceptance. When notified that the entire project is complete, an inspection will be scheduled. If all work is determined to be complete, the inspection will constitute the final inspection and the Contractor will be notified in writing of final acceptance as of the date of the final inspection. Final acceptance relieves the Contractor of further responsibility for the maintenance of the project.

If the inspection discloses any unsatisfactory work, the County will provide to the Contractor a list of the work that is incomplete or requires correction. Immediately complete or correct the work. Furnish notification when the work has been completed as provided above.

SECTION 218 - CRACK PREPARATION AND SEALING

218-1 DESCRIPTION

218-1.1 General

This item shall consist of the cleaning and sealing of cracks before application of the bituminous surface treatment.

218-1.2 Crack Preparation and Sealing

The crack sealing shall consist of routing, cleaning, and properly filling cracks. All cracks sealing on preventative maintenance projects shall be routed, typically 3/4 inch wide by 1/2 inch deep. In locations of ruts or irregular asphalt surface, routing shall be 3/4 inch deep.

All cracks shall be cleaned of all loose material and dried completely by the combination of a hand held probe, blade or brush and compressed air so that the cracks can be readily sealed. When applying the sealant, the pavement surface temperature shall meet that recommended by the sealant manufacturer, but in no case shall the surface temperature be lower than 40° F and rising.

218-2 MATERIALS

218-2.1 Sealant

All cracks shall be filled with a pavement crack and joint sealant meeting the requirements of ASTM D 6690, Type IV.

The joint sealant shall be "MACSEAL 6690-4 MOD", or an approved equal to produce the desired finished product and meet the above requirements.

In addition to filling cracks with sealant as described above, other materials may be used to fill cracks such as backer rods and fine graded asphalt concrete. These added materials if required, are illustrated/specified and called for on the plans.

218-3 CONSTRUCTION METHODS

The cracks shall be filled with sealant commensurate with details shown in the plans. The sealant may then be squeegeed, if necessary, to form the meniscus shown on the detail. Placement without squeegee is preferable.

218-3.1 Acceptance Procedures

Prior to application of material, the Contractor shall provide certified laboratory tests certifying that the material meets the contract specifications. Any retesting of the material by the Owner resulting in noncompliance with the contract specifications shall be paid for by the Contractor.

The Contractor shall deliver to the Owner the test results from the supplier and a certification signed by an authorized representative of the supplier that all material delivered meets all contract specifications.

218-4 METHOD OF MEASUREMENT

Method of Measurement will be as set forth in the Special Provisions.

218-5 BASIS OF PAYMENT

Basis of Payment will be as set forth in the Special Provisions.

218-6 TESTING REQUIREMENTS:

ASTM D-6690	Specification for Joint and Crack Sealants, Hot Applied, for Concrete and Asphalt Pavements
ASTM D-113	Test Method for Ductility of Bituminous Materials
AASHTO T51-81	Revision of T51-86 Ductility of Bituminous Materials

SECTION VI

PREVAILING WAGE RATES

**MONTANA
PREVAILING WAGE RATES FOR HIGHWAY CONSTRUCTION SERVICES 2022**

Effective: January 1, 2022

***Greg Gianforte, Governor
State of Montana***

***Laurie Esau, Commissioner
Department of Labor & Industry***

To obtain copies of prevailing wage rate schedules, or for information relating to public works projects and payment of prevailing wage rates, visit ERD at erd.dli.mt.gov/labor-standards or contact:

Employment Relations Division
Montana Department of Labor and Industry
P. O. Box 8011
Helena, MT 59620-1503
Phone 406-444-6543

The department welcomes questions, comments, and suggestions from the public. In addition, we'll do our best to provide information in an accessible format, upon request, in compliance with the Americans with Disabilities Act.

MONTANA PREVAILING WAGE REQUIREMENTS

The Commissioner of the Department of Labor and Industry, in accordance with Sections 18-2-401 and 18-2-402 of the Montana Code Annotated (MCA), has determined the standard prevailing rate of wages for the occupations listed in this publication.

The wages specified herein control the prevailing rate of wages for the purposes of Section 18-2-401, et seq., MCA. It is required each employer pay (as a minimum) the rate of wages, including fringe benefits, travel allowance, zone pay and per diem applicable to the district in which the work is being performed as provided in the attached wage determinations.

All Montana Prevailing Wage Rates are available on the internet at erd.dli.mt.gov/labor-standards or by contacting the department at (406) 444-6543.

In addition, this publication provides general information concerning compliance with Montana's Prevailing Wage Law and the payment of prevailing wages. For detailed compliance information relating to public works contracts and payment of prevailing wage rates, please consult the regulations on the internet at erd.dli.mt.gov/labor-standards or contact the department at (406) 444-6543.

LAURIE ESAU
Commissioner
Department of Labor and Industry
State of Montana

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A. Date of Publication January 1 2022

B. Definition of Highway Construction

The Administrative Rules of Montana (ARM), 24.17.501(3) – (3)(a), states “Highway construction projects include, but are not limited to, the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, and parking areas, bridges constructed or repaired in conjunction with highway work, and other similar projects not incidental to building construction or heavy construction.

Highway construction projects include, but are not limited to, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment (for road construction), fencing (highway), grade crossing elimination (overpasses or underpasses), guard rails on highways, highway signs, highway bridges (overpasses, underpasses, grade separation), medians, parking lots, parkways, resurfacing streets and highways, roadbeds, roadways, runways, shoulders, stabilizing courses, storm sewers incidental to road construction, street paving, surface courses, taxiways, and trails.”

C. Definition of Public Works Contract

Section 18-2-401(11)(a), MCA defines “public works contract” as “...a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000...”.

D. Prevailing Wage Schedule

This publication covers only Highway Construction occupations and rates in the specific localities mentioned herein. These rates will remain in effect until superseded by a more current publication. Current prevailing wage rate schedules for Building Construction, Heavy Construction and Nonconstruction Services occupations can be found on the internet at <http://erd.dli.mt.gov/labor-standards> or by contacting the department at (406) 444-6543.

E. Rates to Use for Projects

ARM, 24.17.127(1)(c), states “The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.”

F. Wage Rate Adjustments for Multiyear Contracts

Section 18-2-417, MCA states:

“(1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.

(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.”

G. Fringe Benefits

Section 18-2-412, MCA states:

“(1) To fulfill the obligation...a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the U. S. department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits and travel allowances, applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the U. S. department of labor.”

Fringe benefits are paid for all hours worked (straight time and overtime hours). However, fringe benefits are not to be considered a part of the hourly rate of pay for calculating overtime, unless there is a collectively bargained agreement in effect that specifies otherwise.

H. Dispatch City

ARM, 24.17.103(11), defines dispatch city as *“...the courthouse in the city from the following list which is closest to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Miles City, Missoula and Sidney.”*

I. Zone Pay

Zone pay is not travel pay. ARM, 24.17.103(24), defines zone pay as *“...an amount added to the base pay; the combined sum then becomes the new base wage rate to be paid for all hours worked on the project. Zone pay must be determined by measuring the road miles one way over the shortest practical maintained route from the dispatch city to the center of the job.”* See section H above for a list of dispatch cities.

J. Computing Travel Benefits

ARM, 24.17.103(22), states *“ ‘Travel pay,’ also referred to as ‘travel allowance,’ is and must be paid for travel both to and from the job site, except those with special provisions listed under the classification. The rate is determined by measuring the road miles one direction over the shortest practical maintained route from the dispatch city or the employee’s home, whichever is closer, to the center of the job.”* See section H above for a list of dispatch cities.

K. Per Diem

ARM, 24.17.103(18), states *“ ‘Per diem’ typically covers costs associated with board and lodging expenses. Per diem is paid when an employee is required to work at a location outside the daily commuting distance and is required to stay at that location overnight or longer.”*

L. Apprentices

Wage rates for apprentices registered in approved federal or state apprenticeship programs are contained in those programs. Additionally, Section 18-2-416(2), MCA states *“...The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract.”* Apprentices not registered in approved federal or state apprenticeship programs will be paid the appropriate journey level prevailing wage rate when working on a public works contract.

M. Posting Notice of Prevailing Wages

Section 18-2-406, MCA, provides that contractors, subcontractors, and employers who are “...performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.”

N. Employment Preference

Sections 18-2-403 and 18-2-409, MCA require contractors to give preference to the employment of bona fide Montana residents in the performance of work on public works contracts.

O. Projects of a Mixed Nature

Section 18-2-408, MCA states:

“(1) The contracting agency shall determine, based on the preponderance of labor hours to be worked, whether the public works construction services project is classified as a highway construction project, a heavy construction project, or a building construction project.

“(2) Once the project has been classified, employees in each trade classification who are working on that project must be paid at the rate for that project classification”

P. Occupations Definitions

You can find definitions for these occupations on the following Bureau of Labor Statistics website:

<https://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates/building-construction-occupations>

Q. Welder Rates

Welders receive the rate prescribed for the craft performing an operation to which welding is incidental.

R. Foreman Rates

Rates are no longer set for foremen. However, if a foreman performs journey level work, the foreman must be paid at least the journey level rate.

WAGE RATES

BRICK, BLOCK, AND STONE MASONS

Wage	Benefit
\$31.38	\$16.32

Travel:
Travel:
All Districts
0-70 mi. free zone
>70-90 mi. \$60.00/day
>90 mi. \$80.00/day

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CARPENTERS

Wage	Benefit
\$32.75	\$13.82

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + \$4.00/hr.
>60 mi. base pay + \$6.00/hr.

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CEMENT MASONS AND CONCRETE FINISHERS

Wage	Benefit
\$24.87	\$10.80

Duties Include:

Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs. Align forms for sidewalks, curbs, or gutters. Rates for rebar workers can be found under the Ironworkers classification.

Zone Pay:
0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 1

Wage	Benefit
\$26.52	\$11.50

This group includes but is not limited to:

Air Compressor; Auto Fine Grader; Belt Finishing; Boring Machine (Small); Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front-End Loader, under 1 cu. yd; Oiler, Heavy Duty Drills; Herman Nelson Heater; Mucking Machine; Oiler, All Except Cranes/Shovels; Pumpman.

Zone Pay:
0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 2

Wage	Benefit
\$30.72	\$11.50

This group includes but is not limited to:

Air Doctor; Backhoe\Excavator\Shovel, up to and incl. 3 cu. yds; Bit Grinder; Bituminous Paving Travel Plant; Boring Machine, Large; Broom, Self-Propelled; Concrete Travel Batch; Concrete Float & Spreader; Concrete Bucket Dispatcher; Concrete Finish Machine; Concrete Conveyor; Distributor; Dozer, Rubber-Tired, Push, & Side Boom; Elevating Grader\Gradall; Field Equipment Serviceman; Front-End Loader, 1 cu. yd up to and incl. 5 cu. yds; Grade Setter; Heavy Duty Drills, All Types; Hoist\Tugger, All; Hydralift Forklifts & Similar; Industrial Locomotive; Motor Patrol (except finish); Mountain Skidder; Oiler, Cranes\Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete\Grout Machine; Punch Truck; Roller, other than Asphalt; Roller, Sheepsfoot (Self-Propelled); Roller, 25 tons and over; Ross Carrier; Rotomill, under 6 ft; Trenching Machine; Washing /Screening Plant

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Zone Pay:

0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

CONSTRUCTION EQUIPMENT OPERATORS GROUP 3

Wage	Benefit
\$31.38	\$11.50

This group includes but is not limited to:

Asphalt Paving Machine; Asphalt Screed; Backhoe\Excavator\Shovel, over 3 cu. yds; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes, Creter; Cranes, Electric Overhead; Cranes, 24 tons and under; Curb Machine\Slip Form Paver; Finish Dozer; Front-End Loader, over 5 cu. yds; Mechanic\Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill, over 6 ft; Scraper, Single, Twin, or Pulling Belly-Dump; YO-YO Cat.

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Zone Pay:

0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

CONSTRUCTION EQUIPMENT OPERATORS GROUP 4

Wage	Benefit
\$33.10	\$11.50

This group includes but is not limited to:

Asphalt\Hot Plant Operator; Cranes, 25 tons up to and incl. 44 tons; Crusher Operator; Finish Motor Patrol; Finish Scraper.

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Zone Pay:

0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

CONSTRUCTION EQUIPMENT OPERATORS GROUP 5

Wage	Benefit
\$31.44	\$11.50

This group includes but is not limited to:

Cranes, 45 tons up to and incl. 74 tons.

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Zone Pay:

0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

CONSTRUCTION EQUIPMENT OPERATORS GROUP 6

Wage	Benefit
\$32.13	\$11.50

This group includes but is not limited to:

Cranes, 75 tons up to and incl. 149 tons; Cranes, Whirley (All).

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Zone Pay:

0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

CONSTRUCTION EQUIPMENT OPERATORS GROUP 7

Wage	Benefit
\$34.23	\$11.50

This group includes but is not limited to:

Cranes, 150 tons up to and incl. 250 tons; Cranes, over 250 tons—add \$1.00 for every 100 tons over 250 tons; Crane, Tower (All); Crane Stiff-Leg or Derrick; Helicopter Hoist.

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Zone Pay:

0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

CONSTRUCTION LABORERS GROUP 1/FLAG PERSON FOR TRAFFIC CONTROL

Wage	Benefit
\$21.02	\$12.15

Zone Pay:
0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

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CONSTRUCTION LABORERS GROUP 2

Wage	Benefit
\$24.14	\$11.77

This group includes but is not limited to:

General Labor; Asbestos Removal; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-lay Down; Crusher and Batch Worker; Heater Tender; Fence Erector; Landscape Laborer; Landscaper; Lawn Sprinkler Installer; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprappet; Sign Erection; Guardrail and Jersey Rail; Spike Driver; Stake Jumper; Signalman; Tail Hoseman; Tool Checker and Houseman and Traffic Control Worker.

Zone Pay:
0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

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CONSTRUCTION LABORERS GROUP 3

Wage	Benefit
\$24.19	\$11.77

This group includes but is not limited to:

Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker) Non-Riding Rollers; Pipelayer; Posthole Digger (Power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod Cutter-Power and Tamper.

Zone Pay:
0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

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CONSTRUCTION LABORERS GROUP 4

Wage	Benefit
\$25.18	\$11.77

This group includes but is not limited to:

Hod Carrier***; Water Well Laborer; Blaster; Wagon Driller; Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman; Rock & Core Drill; Track or Truck Mounted Wagon Drill and Welder incl. Air Arc.

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Zone Pay:

0-25 mi. free zone
>25-50 mi. base pay + \$2.50/hr.
>50 mi. base pay + \$3.00/hr.

***Hod Carriers will receive the same amount of travel and/or subsistence pay as bricklayers when requested to travel.

DIVERS

	Wage	Benefit
Stand-By	\$44.98	\$17.84
Diving	\$89.96	\$17.84

Depth Pay (Surface Diving)

0-20 ft.	free zone
>20-100 ft.	\$2.00 per ft.
>100-150 ft.	\$3.00 per ft.
>150-220 ft.	\$4.00 per ft.
>220 ft.	\$5.00 per ft.

Diving In Enclosures

0-25 ft.	free zone
>25-300 ft.	\$1.00 per ft.

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Zone Pay:

0-30 mi. free zone
>30-60 mi. base pay + \$4.00/hr.
>60 mi. base pay + \$6.00/hr.

DIVER TENDERS

Wage	Benefit
\$43.98	\$17.84

The tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing a Diver when work is done under hyperbaric conditions.

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Zone Pay:

0-30 mi. free zone
>30-60 mi. base pay + \$4.00/hr.
>60 mi. base pay + \$6.00/hr.

ELECTRICIANS

Wage	Benefit
\$35.59	\$16.39

Travel:

No mileage due when traveling in employer's vehicle.

The following travel allowance is applicable when traveling in employee's vehicle:

0-08 mi. free zone
>08-50 mi. federal mileage rate/mi. in excess of the free zone.
>50 mi. \$60.57/day

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IRONWORKERS - STRUCTURAL STEEL AND REBAR PLACERS

Wage	Benefit
\$29.15	\$27.05

Duties Include:

Structural steel erection; assemble prefabricated metal buildings; cut, bend, tie, and place rebar; energy producing windmill type towers; metal bleacher seating; handrail fabrication and ornamental steel.

Travel:

0-45 mi. free zone
>45-60 mi. \$45.00/day
>60-100 mi. \$70.00/day
>100 mi. \$90.00/day

Special Provision:

When the employer provides transportation, travel will not be paid. However, when an employee is required to travel over 70 miles one way, the employee may elect to receive the travel pay in lieu of the transportation.

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LINE CONSTRUCTION – EQUIPMENT OPERATORS

Wage	Benefit
\$36.00	\$16.92

Travel:

No Free Zone
\$60.00/day

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LINE CONSTRUCTION – GROUNDMAN

Wage	Benefit
\$29.09	\$16.09

Travel:

No Free Zone
\$60.00/day

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LINE CONSTRUCTION – LINEMAN

Wage	Benefit
\$48.65	\$18.03

Travel: No Free Zone \$60.00/day

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MILLWRIGHTS

Wage	Benefit
\$39.68	\$14.27

Zone Pay: 0-30 mi. free zone >30-60 mi. base pay + \$4.00/hr. >60 mi. base pay + \$6.00/hr.

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PAINTERS

Wage	Benefit
\$28.00	\$10.30

Zone Pay: 0-25 mi. free zone >25-50 mi. base pay + \$2.50/hr. >50 mi. base pay + \$3.00/hr.

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PILE BUCKS

Wage	Benefit
\$32.75	\$13.82

Duties include:
Set up crane; set up hammer; weld tips on piles; set leads; insure piles are driven straight with the use of level or plum bob. Give direction to crane operator as to speed, and direction of swing. Cut piles to grade.

Zone Pay: 0-30 mi. free zone >30-60 mi. base pay + \$4.00/hr. >60 mi. base pay + \$6.00/hr.

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TRUCK DRIVERS

	Wage	Benefit
Pilot Car Driver	\$22.39	\$10.16
Truck Driver	\$28.06	\$10.16

Truck drivers include but are not limited to:

Combination Truck and Concrete Mixer and Transit Mixer;
Dry Batch Trucks; Distributor Driver; Dumpman; Dump
Trucks and similar equipment; Dumpster; Flat Trucks;
Lumber Carriers; Lowboys; Pickup; Powder Truck Driver;
Power Boom; Serviceman; Service Truck/Fuel
Truck/Tireperson; Truck Mechanic; Trucks with Power
Equipment; Warehouseman, Partsman, Cardex and
Warehouse Expeditor; Water Trucks.

Zone Pay:

All Districts

0-25 mi. free zone

>25-50 mi. base pay + \$2.50/hr.

>50 mi. base pay + \$.300/hr.

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APPENDIX A

MISCELLANEOUS FORMS

NOTICE OF AWARD

TO: _____ DATE: _____

PROJECT: 2022 Crack Seal Project

PROJECT NO: _____

PROJECT DESCRIPTION:

The Owner has considered the Bid submitted by you for the above-described work in response to its Invitation to Bid dated _____ and Instructions to Bidders.

You are hereby notified that your Bid has been accepted for:

In the amount of \$

You are required by the Instructions to Bidders to execute the Agreement and furnish the required **Contractor's Performance Bond, Payment Bond, and Certificates of Insurance** within 10 calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said bonds and proof of insurance within 10 days from the date of this Notice, the Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this _____ day of _____.

OWNER: Flathead County _____

BY: _____
SIGNATURE

PRINT OR TYPE NAME TITLE

ACCEPTANCE OF NOTICE OF AWARD

Receipt of the above Notice of Award is hereby acknowledged
this _____ day of _____.

CONTRACTOR: _____

BY: _____
SIGNATURE

PRINT OR TYPE NAME TITLE



PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence,

to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims

for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

**AGREEMENT
2022 CRACK SEAL PROJECT
FLATHEAD COUNTY**

This Agreement is entered into as of the ____ day of _____, 2022, by and between Flathead County("County") and _____("Contractor"). The parties hereto agree as follows:

1. DESCRIPTION OF WORK:

- A. Contractor agrees, for the consideration and under the terms and conditions hereinafter set forth, to furnish and transport all necessary labor, materials, tools, implements, and appliances required to perform and completely finish in a workmanlike manner to the satisfaction and approval of the County, free of any and all liens and claims of laborers, material, men, suppliers, and subcontractors, and in conformity in all respects with all applicable federal, state, county, and city ordinances, rules, and regulations, the project which is described in the Invitation to Bid and these Contract Documents.
- B. The Project shall be accomplished according to all of the contract documents, as listed below, and according to the Contract Documents and Specification prepared in connection with the Project and incorporated herein by reference, which Specifications may be amended from time to time. The contract documents include:
1. Invitation to Bid
 2. Instructions to Bidders
 3. Bidder's Checklist
 4. Proposal
 5. EJCDC Standard General Conditions (Incorporated by Reference)
 6. Modifications to EJCDC Standard General Conditions
 7. Flathead County Supplementary Conditions
 8. Special Provisions
 9. Montana Public Works Specifications (Incorporated by Reference)
 10. Technical Specifications and Modifications to MPW Technical Specifications
 11. Miscellaneous Forms
 12. Minimum Standards for Design and Construction for Flathead County (Incorporated by Reference)

2. CONTRACT PRICE:

The County shall pay Contractor for such labor and materials _____
_____ hereinafter called "Contract Price" as follows:

The County agrees to make progress payments to Contractor within thirty (30) days following the Owner's approval of the request for payment, in an amount equal to ninety-five percent (95%) of the portion of the Contract Price allocable to labor, materials and equipment incorporated into the Project, less the aggregate of previous payments.

Upon completion of the Project, the remaining five percent (5%) of the Contract Price will be paid after the Project is inspected and accepted by the County as described in the Flathead County Supplementary Conditions. The Performance Bond shall remain in full force and effect through the contract period.

3. DISCHARGE OF LIENS:

If at any time during the progress of the work or before the final payment is made, any lien or claim of lien is filed, or notification to withhold money for labor or materials furnished by or through Contractor under this Agreement is served on the County, the County shall have the right to withhold from any payment due Contractor, an amount equal to one and one-half (1 ½) times the amount of any or all such liens or claims. If Contractor has not settled the liens or claims by the date of completion of the Project, the County shall have the right, but shall not be obliged, to discharge any and all such liens or claims out of the withheld money.

4. EXTRA WORK:

If at any time or times during the progress of the Project, the County desires to make any additions to, alterations of, deviations from, or omissions from the Project, it may do so and the same shall in no way affect or make void this Agreement, but no such additions, alterations, deviations, or omissions shall be made except on the County's written request. Any such alterations, deviations, or omissions that decrease the cost of the Project shall be evaluated on a lump-sum basis and this amount shall be deducted from the Contract Price. Any such additions, alterations, or deviations that increase the cost of the Project shall at the County's option be evaluated (1) on a lump-sum basis, the amount thereof to be agreed on in writing before the initiation of such addition, alteration, or deviation, or (2) on the basis of Contractor's actual out-of-pocket expenses plus ten percent (10%). This extra work shall be held to be completed when the entire Project is finished in accordance with the original Plans and Specifications as amended by such changes, whatever may be their nature or extent. No premium rate for overtime, weekend or holiday work is authorized by the County.

5. TIME FOR COMMENCEMENT AND COMPLETION:

Contractor agrees to commence work as specified in the Notice to Proceed. The Contractor agrees to complete the entire Project under this Agreement, as may be amended, no later than **21** calendar days after the Notice to Proceed commencement of work date and all work to be completed by **June 30, 2022** as specified in the Special Provisions.

6. COMPLIANCE WITH STATE LAW:

Contractor shall at all times pay prevailing wages as provided in Section 18-2-401, MCA. The prevailing wage rates, including fringe benefits, applicable to the Project are incorporated herein by reference. In addition, the Contractor shall be required to pay the 1% public contractor license fee required by Section 15-50-101, et seq., MCA, and such amount shall be withheld by the County and remitted to the Montana Department of Revenue. Contractor shall comply with Section 18-2-403, MCA, regarding preference in employment to Montana residents. Finally, Contractor shall comply with Section 39-3-701, et seq., MCA, which requires the posting of a bond with the Commission of Labor and Industry to insure payment of workers' wages and fringe benefits.

7. CHARGES AND LIENS:

Contractor shall pay all charges incurred by him for labor and materials used in the Project as they become due. Should Contractor fail to pay any such charge, or fail to furnish the County with proper indemnity, either by satisfactory corporate surety bond or satisfactory title insurance policy, the County may pay the same on behalf of Contractor and shall be reimbursed by the Contractor for such payment on request. The County, however, shall not be entitled by means of assignments or otherwise to collect from Contractor any greater amount under this Section than the amount actually paid by the County (including attorneys' fees and costs) in reasonable settlement or discharge of any such charge for labor and materials.

8. INDEMNITY AGREEMENT:

Contractor shall indemnify and save harmless the County and its agents and servants, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, losses, or liabilities, in law or in equity, of every kind and nature whatsoever, for, but not limited to, injury to or death of Contractor, any subcontractor, or any employees of the County, Contractor, or any subcontractor, or any other person, and damages to or destruction of property of the County or any other person, arising out of or in any manner directly or indirectly connected with the work to be performed under this Agreement, however caused, regardless of any negligence of the County or its agents or servants, be it active or passive, except the sole negligence or willful misconduct of the County or its agents or servants. Said indemnification shall include the defense of any actions or other legal proceedings and reimbursement of attorneys' fees and other legal expenses incurred by the County and shall include any and all penalties imposed upon the County on account of the violation of any law or regulation by Contractor.

9. INSURANCE:

- A. Before commencement of any work under this Agreement, Contractor shall take out and thereafter during the life of this Agreement maintain in full force and effect an insurance policy written upon a form and by a company which meets with the approval of the County, insuring the County, its officers, agents, and employees against loss or liability which may arise during the work on the Project, or which may result from any of the work herein required to be done, including all costs of defending any claim arising as a result thereof. Insurance shall be written to meet the limits specified in the Flathead County Supplementary Conditions. Said policy shall be written in favor of Contractor and all subcontractors and also in favor of the County, its officers, agents, and employees and shall be maintained in full force and effect until the Project is unconditionally accepted by the County. This insurance policy shall state by its terms that it shall not be canceled without ninety (90) days written notice thereto having been given to the County.
- B. Before commencement of any work under this Agreement, Contractor shall take out and thereafter during the life of this Agreement, maintain in full force and effect workers' compensation insurance covering Contractor's full liability for compensation to any person or persons who are or may be engaged in the execution of the work done under this Agreement, in compliance with all Workers' Compensation Insurance of the State of Montana and amendments thereto.
- C. Written proof of compliance with these requirements (a) and (b) shall be filed with and approved by the County before commencement of the Project. Contractor shall pay any and all deductibles required by these insurance policies.

10. PERFORMANCE AND PAYMENT BOND:

As required by Section 18-2-201, et seq., MCA, Contractor, at his own cost and expense, shall procure prior to commencement of work and maintain during the term of this Agreement, a performance bond and a payment bond, in a sum not less than the Contract Price, to guarantee faithful performance of all of Contractor's obligations as set forth herein, and to secure payment to its subcontractors, and all other persons performing labor or providing material, including the rental of equipment, relating to the Project as provided herein. Such bonds shall be in a form satisfactory to the County.

11. LIQUIDATED DAMAGES:

The parties agree that it would be extremely difficult to determine the County's actual damages in the event that the Contractor fails to complete the Project within the time for completion, as set forth herein. If the Contractor fails to complete the Project within the time for completion, then the

Contractor shall pay to the County \$500 per day as liquidated damages, and not as a penalty, and to pay the Owner labor and equipment as set forth in the Flathead County Supplementary Conditions, to cover additional inspection cost, for each calendar day the Project is incomplete and not accepted by the County.

12. TERMINATION OF CONTRACT/DAMAGES:

- A. Should Contractor at any time during the progress of the Project refuse or neglect to supply sufficient materials or workmen to complete the Project for a period of more than seven (7) days after having been notified by the County to furnish them, or should Contractor at any time during the progress of the work refuse or fail to make prompt payment to subcontractors, laborers or material, men for labor performed on or materials furnished to the Project for a period of more than seven (7) days after having been notified by the County to make said payments, the County may terminate this Agreement and contract for completion of the work or complete the work itself and make good any deficiencies and may deduct the costs thereof, including all expenses and attorneys' fees, from the payment then or thereafter due to the Contractor. On completion of said Project by the County or the County's agent, if the unpaid balance of the Contract Price exceeds the actual expenses, including attorneys' fees, incurred by the County in completing the Project, such excess shall be promptly paid by the County to Contractor. If, however, on completion of the Project by the County or the County's agents, the expenses, including attorneys' fees, incurred by the County in completing the Project exceed the unpaid balance of the Contract Price; such excess shall be promptly paid by Contractor to the County.

Additionally, upon default under this Agreement by Contractor, the County may recover from Contractor all damages allowed by law.

- B. Should the County fail to pay Contractor within seven (7) days after payment becomes due as provided herein any amount payable by the County to Contractor pursuant to this Agreement, Contractor may, following seven (7) days' written notice thereof to the County, terminate his services under this Agreement until all past-due payments have been received by Contractor or are set aside in an escrow; and, additionally, Contractor may recover from the County all damages allowed by law.

13. UNAVOIDABLE DELAYS AND DEFAULTS:

Either party, Contractor or the County, shall be excused for any delays or defaults by it in the performance of this Agreement unavoidably caused by the act of the other, or the agents or subcontractors or suppliers of the other, and the Contractor shall be excused for any delays or defaults caused by Acts of God that Contractor could not have reasonably foreseen and provided for, by stormy weather which prevents the work, by strikes, by walk-outs, by civil disorders, by boycotts, or by failure to obtain the necessary materials due to governmental acts, restrictions or regulations, and the time for completion of the Project shall be extended thereby.

14. EMPLOYMENT - NON-DISCRIMINATION:

Contractor shall comply strictly with applicable federal, state, and local requirements relating to the establishment of non-discriminatory practices in hiring and employment.

15. LAWS AND REGULATIONS:

Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the Project. If Contractor observes that the Plans and Specifications are at variance therewith, he shall promptly notify the County in writing, and any necessary changes shall be adjusted as provided in the Agreement for changes in the work. If Contractor performs any work

contrary to such laws, ordinances, rules, and regulations, and without written notice to the County, he shall bear all costs arising therefrom.

16. CUSTOMER RELATIONS:

Contractor agrees that its personnel and equipment shall at all times present a neat appearance; all work shall be done, all contacts with customers and all complaints handled with due regard for the County's public relations. Contractor agrees that complaints of any nature received from the public or from public authorities shall receive immediate attention. All complaints and any action taken by the Contractor with respect to such complaints shall be reported to the County.

17. NOTICES:

Any and all notices or other matters required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party to this Agreement shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after deposited in the United States mail, first-class postage paid, addressed to the County at 1249 Willow Glen Drive, Kalispell, Montana 59901, or to Contractor at _____. Either party, the County or Contractor, may change its address for the purpose of this section by giving written notice of such change to the other party in the manner provided in this section.

18. ATTORNEYS' FEES:

In the event of any litigation concerning any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or the breach hereof, or the interpretation hereof, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein.

19. CAPTIONS:

The captions and headings of the different sections of this Agreement are inserted for convenience of reference only, and are not to be taken as part of this Agreement or to control or affect the meaning, construction, or effect of the same.

20. NECESSARY ACTS:

Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

21. ASSIGNMENT:

Neither party may assign this Agreement, or payments due under the Agreement, without the written consent of the other party.

22. GOVERNING LAW:

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Montana.

23. FORUM:

Any litigation to enforce or interpret the provisions of this Agreement or the parties' rights and

liabilities arising out of this Agreement or the performance hereunder shall be maintained only in the courts in the County of Flathead, State of Montana.

24. SOLE AND ONLY AGREEMENT:

This Agreement, including any exhibits attached hereto, and including all other documents referred to herein, constitute the sole and only Agreement of the parties hereto relating to the Project and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement or referenced herein are of no force and effect.

25. TIME OF ESSENCE:

Time is of the essence in this Agreement.

26. SEVERABILITY:

In the event that any part or provision of this Agreement is found to be illegal or unconstitutional by a court of competent jurisdiction, such findings shall not affect the remaining parts, portions, or provisions of this Agreement.

CONTRACTOR:

FLATHEAD COUNTY:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

NOTICE TO PROCEED

TO: _____ **DATE:** _____

PROJECT: 2022 Crack Seal Project

PROJECT NO: _____

In accordance with the Agreement dated _____, you are hereby notified to commence work no later than _____, and you are to complete the work within _____ consecutive calendar days thereafter. The date of completion of all work is, therefore, _____.

OWNER: _____

BY: _____
SIGNATURE DATE

PRINT OR TYPE NAME TITLE

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the above Notice to Proceed is hereby acknowledged
this _____ day of _____.

CONTRACTOR: _____

BY: _____
SIGNATURE DATE

PRINT OR TYPE NAME TITLE



APPROVAL OF SUBCONTRACTORS

PROJECT TITLE: 2022 Crack Seal Project

PROJECT NO: _____

CONTRACTOR: _____

Listed below are all of the subcontractors which we propose to use on this project. Your approval of these subcontractors is requested.

We certify that these subcontractors, as listed, have been advised of the labor standards and provisions applicable to this project and that these provisions, as incorporated in the Contract between the Owner and the undersigned Contractor, will be incorporated in the contracts between the Contractor and the listed subcontractors. These provisions shall include all necessary insurance, workers compensation, and other legal requirements that the Contractor must carry.

NAME AND ADDRESS OF SUBCONTRACTOR	MONTANA PUBLIC CONTRACTOR'S REGISTRATION NO.	TYPE OF WORK	APPROXIMATE VALUE OF SUBCONTRACT
		TOTAL:	

Any deviation from this list shall be approved by the Owner prior to the subcontractor conducting the work.

SIGNED BY (Contractor): _____
SIGNATURE PRINT OR TYPE NAME DATE

APPROVED BY (Owner): _____
SIGNATURE PRINT OR TYPE NAME DATE



CHANGE ORDER

PROJECT TITLE: 2022 Crack Seal Project

PROJECT NO.: _____

CHANGE ORDER NO.: _____

OWNER: _____

DATE OF CHANGE ORDER: _____

CONTRACTOR: _____

CONTRACT DATE: _____

Change orders must be accompanied by an itemized cost breakdown, i.e.: unit prices, negotiated lump sum prices, negotiated cost plus basis. Note all cost plus pricing to be supported by documentation which supports the cost of that item.

ITEM NO.	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	AMOUNT	BASIS OF UNIT PRICE

JUSTIFICATION OF CHANGE ORDER:

--

SUMMARY OF COST AND TIME:

COST BREAKDOWN:

Original Contract Price: _____

Previous Change Order Amount: _____

Current Contract Price: _____

Amount of This Change Order: _____

New Contract Price: _____

TIME BREAKDOWN:

Start of Construction: _____

Calendar Days by Contract: _____

Contract Completion Date: _____

No. of Days Granted This Change Order: _____

New Contract Completion Date: _____

The completion date as set forth in the contract documents shall be ☐ unchanged ☐ increased ☐ decreased by _____ calendar days. The date for completion of all work will be _____.



CHANGE ORDER

FULL AND FINAL RESOLUTION:

Execution of this Change Order by the Contractor shall constitute full and final resolution of all claims, impacts, delays, or costs associated with the change, and the Contractor waives any and all claims for money, impacts, delays, costs, or any other effect of the change(s) covered by this Change Order.

APPROVALS:

Surety consent is required if the net increase of this change order and all previous change orders exceeds 20% of the original contract amount.

SURETY CONSENT

The surety hereby consents to the aforementioned contract change order and agrees that its bond or bonds shall apply and extend to the contract as thereby modified or amended per this change order. The principal and the surety further agree that on or after execution of this consent, the penalty of the applicable performance bond or bonds is hereby increased by \$_____ (100% of the change order amount) and the penalty of the applicable labor and material bond or bonds is hereby increased by \$_____ (100% of the change order amount).

COUNTERSIGNED BY MONTANA RESIDENT AGENT

COMPANY

By: _____
SIGNATURE

PRINT OR TYPE NAME

TITLE

SURETY

COMPANY

By: _____
SIGNATURE

PRINT OR TYPE NAME

TITLE

(SEAL)

ACCEPTED BY (Contractor): _____
SIGNATURE PRINT OR TYPE NAME DATE

APPROVED BY (Owner): _____
SIGNATURE PRINT OR TYPE NAME DATE



APPLICATION AND CERTIFICATE FOR PAYMENT	
Application No. <u>1</u>	Page <u>1</u> of <u>2</u>
Period from : _____	To: _____
OWNER: _____ _____ _____	CONTRACTOR: _____ _____ _____
PROJECT: <u>2022 Crack Seal Project</u>	
CONTRACT DATE: _____	

Page 1 of 2

OWNER:	CONTRACTOR:

CONTRACT DATE: _____

ORIGINAL CONTRACT SUM					
	Change Order No.				
	Change Order No.				
	Change Order No.				
Net Change by Change Orders					\$0.00
CONTRACT SUM TO DATE					\$0.00

Change Order No. _____

CONTRACT SUM TO DATE	\$0.00
----------------------	--------

Estimate No.	Amount Earned This Estimate	Retainage Held This Estimate	Amount Earned Less Retainage	Less 1% Gross Receipts Tax	Total
Totals:	0.00	0.00	0.00	0.00	0.00

Less Previous Certificates for Payment:	0.00
---	------

Current Payment Due: 0.00

CONTRACTOR'S CERTIFICATE

The undersigned Contractor certifies that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by him for Work for which previous Certificates for payment were issued and payments received from the Owner, and that current payment shown herein is due.

Dated: _____

Contractor

By: _____

OWNER'S CERTIFICATE FOR PAYMENT

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above "Current Payment Due" is recommended.

Dated: _____

Owner

By: _____

The undersigned Contractor certifies that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by him for Work for which previous Certificates for payment were issued and payments received from the Owner, and that current payment shown herein is due.

Dated: _____ Contractor _____

By: _____

OWNER'S CERTIFICATE FOR PAYMENT

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above "Current Payment Due" is recommended.

Dated: _____

_____ Owner

By: _____

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above "Current Payment Due" is recommended.

Dated: _____

Owner _____

By: _____

AFFIDAVIT ON BEHALF OF CONTRACTOR

STATE OF: _____):ss
COUNTY OF: _____)
PROJECT: 2022 Crack Seal Project
PROJECT NUMBER: _____ DATE: _____

I certify to the best of my knowledge and belief that all work has been performed and materials supplied in strict conformance with the terms and conditions of the corresponding Contract Documents between _____, the Owner, and _____, the Contractor, dated _____ for the _____ Flathead County 2022 Crack Seal _____ Project, No. _____, and further declare that all bills for materials, supplies, utilities, and for all other things furnished or caused to be furnished by the above-named Contractor and used in the execution of the above Contract have been fully paid, and there are no unpaid claims or demands of State Agencies, subcontractors, materialmen, mechanics, laborers or any others resulting from or arising out of work done or ordered to be done by said Contractor under the above-identified Contract.

In consideration of the prior and final payments made and all payments made for authorized changes, the Contractor releases and forever discharges the Owner from any and all obligations and liabilities arising by virtue of said Contract and authorized changes between the parties hereto, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the Owner, arising out of or in any way relating to said Contract, and authorized changes. This Waiver includes any claim of lien as well as any and all claims under 40 U.S.C. §§ 270a-270d ("the Miller Act") or any state statute serving a substantially similar purpose, and releases and waives any and all claims to any private bond right.

This statement is made for the purpose of inducing the Owner to make Final Payment under the terms of the Contract, relying on the truth and statements contained therein. The Contractor acknowledges others, including lenders, insurers, and the Engineer, will rely upon this instrument as a full and complete waiver and release of all claims in the normal course of their transactions.

Dated this _____ day of _____, _____, at _____, Montana.

CONTRACTOR: _____

Subscribed and sworn to before me this _____ day
of _____, _____.

NOTARY PUBLIC FOR THE STATE OF MONTANA

BY: _____
SIGNATURE DATE

PRINT OR TYPE NAME TITLE

RESIDING AT _____

MY COMMISSION EXPIRES _____



CONTRACTOR'S CERTIFICATE OF COMPLETION

TO (Owner): Flathead County
800 S Main St
Kalispell, MT 59901

DATE: _____
PROJECT: 2022 Crack Seal Project
PROJECT NO: _____
CONTRACT DATE: _____

FROM (Contractor): _____

This is to certify that I, _____, am an authorized official of _____, working in the capacity of _____, and have been properly authorized by said firm or corporation to sign the following statements pertaining to the subject contract:

I know of my own personal knowledge, and do hereby certify, that the work of the contract described above has been performed, and materials used and installed in every particular, in accordance with, and in conformity to, the Contract Plans and Specifications.

The contract work is now complete in all parts and requirements and ready for your substantial completion inspection.

I understand that neither the determination of the Engineer that the work is complete nor the acceptance thereof by the Owner shall operate as a bar to claim against the Contractor under the terms of the guarantee provisions of the Contract Documents.

CONTRACTOR: _____

BY: _____
SIGNATURE DATE
PRINT OR TYPE NAME TITLE



CERTIFICATE OF SUBSTANTIAL COMPLETION

TO (Owner): Flathead County

SUBSTANTIAL COMPLETION DATE: _____

PROJECT: 2022 Crack Seal Project

CONTRACT DATE: _____

PROJECT NO: _____

INSPECTION DATE: _____

PROJECT OR PART SHALL INCLUDE:

PERFORMANCE BOND NO: _____

DATE OF BOND: _____

SURETY: _____

CONTRACTOR: _____

MONTANA AGENT: _____

ADDRESS: _____

ADDRESS: _____

PHONE NO: _____

PHONE NO: _____

The Work performed under this Contract has been inspected by authorized representatives of the Owner, Contractor, and Engineer, and the Project (or specified part of the Project, as indicated above) is hereby declared to be substantially completed on the above date.

DEFINITION OF SUBSTANTIAL COMPLETION

The date of substantial completion of a project or specified area of a project is the date when the construction is sufficiently completed, in accordance with the contract documents, as modified by any change orders agreed to by the parties, so the Owner can occupy or utilize the project or specified area of the project for the use for which it was intended.

A tentative list of items to be completed is appended hereto. This list may not be exhaustive, and the failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents.

The Contractor accepts the above Certificate of Substantial Completion and agrees to complete and correct the items on the tentative list within the time indicated.

CONTRACTOR: _____

BY:

SIGNATURE

DATE

The Owner accepts the Project or specified area of the Project as substantially complete and will assume full possession of the project or specified area at _____ (time), on _____ (date). The responsibility for heat, utilities, security, and insurance under the Contract Documents shall be as set forth under "Remarks" below.

OWNER: _____

BY:

SIGNATURE

DATE

REMARKS: (include additional information if necessary)



CONSENT OF SURETY COMPANY TO FINAL PAYMENT

OWNER: Flathead County _____
ENGINEER: _____
CONTRACTOR: _____
SURETY: _____
PROJECT: _____
PROJECT NUMBER: _____
CONTRACT DATE: _____

In accordance with the provisions of the contract between the Owner and the Contractor indicated above, the _____, SURETY COMPANY, on bond of _____, CONTRACTOR, hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to _____, OWNER, as set forth in the said Surety Company's bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this _____ day of _____.

SURETY COMPANY:



COMPANY NAME _____

ADDRESS _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE _____

TITLE _____

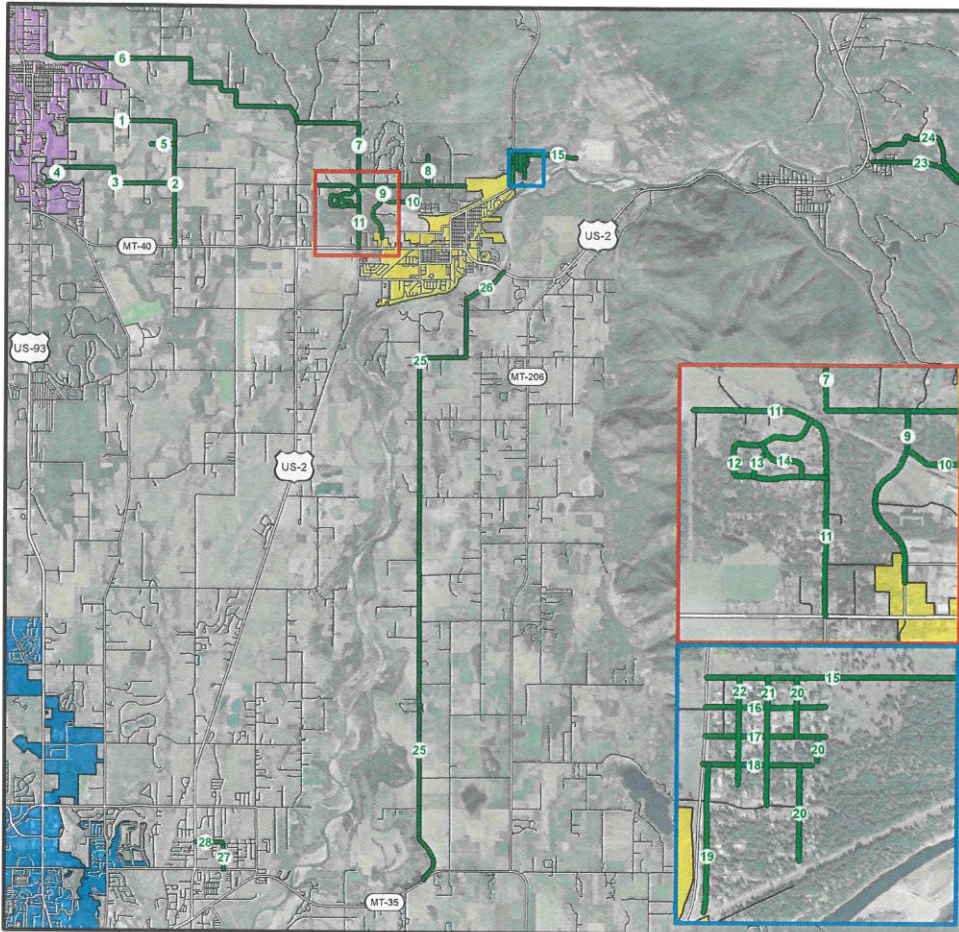
DATE _____

NOTE: This form is to be used as a companion document to the Affidavit on Behalf of Contractor (current edition).



APPENDIX B

MAP OF ROAD LOCATIONS



2022 Flathead County Crack Seal Project

Legend

- FC Crack Seal Roads
- Major Roads
- Other Roads

City Limits

- Columbia Falls
- Kalispell
- Whitefish

0 0.5 1 2 3 4 Miles



Map Created By:
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Priority	Name	Begin	End
1	Voerman Road	Whitefish City Limits	Dillon Road
2	Dillon Road	Voerman Road	Highway 40
3	Monegan Road	Dillon Road	JP Road
4	JP Road	Whitefish City Limits	Monegan Road
5	Haskill Drive	Dillon Road	Dead End
6	East Edgewood Drive	Whitefish City Limits	Tamarack Lane
7	Tamarack Lane	East Edgewood Drive	Columbia Falls City Limits
8	Woodland Road	Tamarack Lane	End of Maintenance
9	Meadow Lake Boulevard	Columbia Falls City Limits	Tamarack Lane
10	Rocky Lane	Meadow Lake Boulevard	12th Ave NW
11	North Hilltop Road	Highway 2	End of Maintenance
12	Dawn Drive	N. Hilltop Road North	N. Hilltop Road South
13	Parkview Way	Terrace Drive	Dawn Drive
14	Terrace Drive	Dawn Drive	Dawn Drive
15	Aluminum Drive	N. Fork Road	End of Public Roadway
16	15th Street East	N. Fork Road	End of Maintenance
17	14th Street East	N. Fork Road	End of Maintenance
18	13th Street East	N. Fork Road	End of Maintenance
19	Frontage Road	End of Maintenance	13th Street East
20	Dorothy Street	End of Maintenance	Aluminum Drive
20	Dorothy Street	End of Maintenance	Aluminum Drive
20	Dorothy Street	End of Maintenance	Aluminum Drive
21	Florence Street	End of Maintenance	Aluminum Drive
22	Marjorie Street	End of Maintenance	Aluminum Drive
23	Southfork Road	Old Highway 2	Spotted Bear Road
24	Spotted Bear Road	Southfork Road	Old Highway 2
25	Columbia Falls Stage	Highway 35	River Road
26	River Road	Columbia Falls Stage	Highway 2
27	Edgewood Road	E. Evergreen Drive	Solberg Drive
28	Spring Creek Drive	Highway 2	Solberg Drive